



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC, OLC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The landlord acknowledged receipt of evidence submitted by the tenant. Both parties gave affirmed testimony.

Issue to be Decided

Did the tenant provide the landlord with her forwarding address in writing? Did the landlord return the security deposit in a timely manner? Is the tenant entitled to the return of double the security deposit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started in January 2016 and ended on July 31, 2015. The monthly rent was \$1,300.00. The tenant testified that the rental unit was shared with her, by two other room mates who had paid their portion of the security deposit of \$650.00. The tenant stated that when they moved out she returned their contributions to the security deposit

During the hearing the parties discussed the amount of the security deposit held by the landlord. The landlord stated that he had returned \$325.00 to the male tenant who left the unit and was currently holding \$325.00. The tenant argued that the landlord did not return any part of the security deposit to the male tenant because she had done so herself. The landlord did not provide any document to support his testimony.

The parties communicated primarily by text message and the tenant filed copies of the messages between the two parties for the period of July 31, 2016 to September 27, 2016. The tenant provided the landlord with her forwarding address on July 31, 2016.

The parties discussed meeting to exchange keys and handing over the rental unit. The landlord was not able to attend the unit on July 31, 2016 and therefore instructed the tenant to mail the keys to him. The tenant stated that she did so but the landlord denied having received the keys. The landlord informed the tenant via text message that he would be making a deduction from the security deposit for the cost of replacing the keys and would be returning the balance to the tenant. The tenant did not agree.

After a cheque allegedly sent by the landlord to the tenant was not received by the tenant, on September 27, 2016 the landlord sent the tenant an email transfer of a portion of the security deposit. The tenant did not accept the transfer and filed this application.

Analysis

The landlord testified that the portion of the security deposit that he was holding was \$325.00 because he had returned \$325.00 to the previous tenant. The tenant stated that the previous tenant that the landlord referred to was her boyfriend and he did not receive his portion of the deposit from the landlord. The tenant stated that she returned his portion of the deposit when he moved out. The tenant also added that she had returned to the other tenant her portion of the security deposit when she moved out.

Based on the testimony of both parties, I find that I prefer the testimony of the tenant. Each of the three tenants had put in a third of the deposit. Even if I accept that the landlord returned \$325.00 to the male tenant, he would not have returned half the total deposit as he testified that he did because the male tenant had paid a third of the total deposit. Accordingly, I find that the landlord is currently holding a security deposit of \$650.00.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

In this case, the tenant gave the landlord her forwarding address in writing on day she moved out – July 31, 2016. I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of the receipt of the forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

Accordingly, the landlord must return \$1,300.00 to the tenant. Since the tenant has proven her case she is also entitled to the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$1,400.00. Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount which represents double the security deposit plus the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

In regards to the landlord's claims relating to loss that he may have suffered, I am not able to hear or consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. The landlord is at liberty to file his own application for damages against the tenant.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,400.00**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 26, 2017

Residential Tenancy Branch