



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

Preliminary Issue – Service of Landlord's Evidence

The landlord served a 42 page evidence package to the Residential Tenancy Branch ("RTB") prior to the hearing. During the hearing, the landlord testified that due to a recent death in the family, this evidence package was not served to the tenant.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. Since the landlord did not serve this evidence to the tenant, there would be a denial of the fundamental right to natural justice if I were to consider the landlord's evidence that was not provided to the tenant. It would prejudice the tenant to admit evidence that she has not had the opportunity to review. For these reasons, I have not relied on the landlord's 42 page evidence package to form any part of my decision.

Preliminary Issue – Adjournment Request

At the conclusion of the hearing, the landlord requested an adjournment to allow him the opportunity to submit his evidence package to the tenant and in turn have his evidence admitted.

Residential Tenancy Branch, Rules of Procedure, rule 7.9 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- (a) the oral or written submissions of the parties;
- (b) the likelihood of the adjournment resulting in a resolution;
- (c) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment;
- (d) whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- (e) the possible prejudice to each party

I informed the landlord at the hearing that I would not adjourn the hearing. As the tenant filed her application on October 24, 2016 and the hearing was held April 27, 2017, I find the landlord had six months to serve the tenant with any evidence he intended to rely upon. I considered all the criteria in 7.9 and declined to adjourn the hearing as I find the landlord had ample opportunity to file his evidence, as evidenced by his submission to the RTB. I find it would unfairly prejudice the tenant to reschedule the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

As per the testimony of the parties, the tenancy began on November 1, 2014 on a fixed term until April 1, 2015 at which time the tenancy continued on a month to month basis. On November 1, 2015, the parties entered into another fixed term tenancy until May 1, 2016 at which time the tenancy continued on a month to month basis. Rent in the amount of \$1,350.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$675.00 and a pet deposit in the amount of \$675.00 at the start of the tenancy, which the landlord still retains. The tenant vacated the unit on August 1, 2016.

The landlord confirmed he received the tenant's forwarding address in writing by way of registered mail on October 5, 2016. The parties agreed the tenant did not authorize the landlord verbally or in writing, to retain the security deposit.

Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposits, or return the deposits. The tenant may waive their right to the return of the security and pet deposit through written authorization to the landlord. In the absence of written authorization from the tenant, the landlord must return the security and pet deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security and pet deposit.

The landlord received the forwarding address on October 5, 2016. The landlord did not file an arbitration application to retain the deposits, the landlord did not return the deposits and the landlord did not receive written authorization to retain them. Based on this, I find the tenant is entitled to double the value of her security and pet deposit in the amount of \$2,700.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$2,800.00.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,800.00 against the landlord.

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 28, 2017

Residential Tenancy Branch