



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

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

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 1:20 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:00 p.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant testified that on November 11, 2016, she sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. A registered mail receipt and tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to compensation for loss?

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

Background and Evidence

The tenant paid a security deposit of \$600.00 on September 18, 2016 for a tenancy that was supposed to begin on October 1, 2016. After receiving the deposit, the landlord had additional questions with respect to references for the tenant. The parties had a verbal conversation on September 28, 2016 during which it was agreed by both parties that the tenant will not be moving into the rental unit.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant provided a registered mail receipt and a letter dated October 3, 2016 as proof of service of a forwarding address. The tenant testified that the landlord initially returned the \$600.00 security deposit but then a stop payment was placed on the cheque. A copy of the cheque was provided on file.

The tenant is also claiming a \$150.00 fee she had to pay in order to cancel her move that was booked with a moving company.

Analysis

Pursuant to section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that the tenancy was created when the security deposit was paid by the tenant on September 18, 2016 and the rights and obligations of the landlord and tenant under the Act take effect this date.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenant did provide a forwarding address in writing to the landlord. The tenant's security deposit was not refunded within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of \$1200.00, which is double the original security deposit of \$600.00.

The tenants claim for fees paid to cancel the move is dismissed as the tenant's own testimony was that the parties mutually came to an agreement that the tenancy would not begin.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$1300.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1300.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 12, 2017

Residential Tenancy Branch