



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

On December 14, 2016, the Tenants submitted an Application for Dispute Resolution for a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenant, Ms. S.P. appeared at the hearing; however, the Landlord did not. The Tenant provided affirmed testimony that she served the Landlord with the Notice of Hearing using Canada Post Registered Mail on December 20, 2016. The Tenant provided the Registered Mail receipt number as proof of service.

I find that that the Notice of Hearing was served to the Landlord in accordance with sections 89 and 90 of the Act and the Notice of Hearing is deemed to have been received by the Landlord.

The Tenant provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to the return of double the security deposit?
- Are the Tenants entitled to compensation under section 49 of the Act?
- Are the tenants entitled to recover ½ a month's rent?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy commenced in September 2015, and ended on November 15, 2016. Rent in the amount of \$1,400.00 was due on the first day of each month. The Tenants paid the Landlord a security deposit of \$700.00.

The Tenant testified that she received a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated October 30, 2017. The Tenants' accepted the 2 Month Notice.

The Tenant testified that they moved out of the rental unit on November 15, 2016, and the Landlord did not return the security deposit within 15 days of the end of the tenancy.

The Tenant testified that the Landlord did not perform a move out inspection at the end of the tenancy.

The Tenant testified that she provided her forwarding address in writing to the Landlord on November 15, 2016. The Tenant provided a copy of the letter providing her forwarding address.

The Tenant testified that there was no agreement that the Landlord could retain any amount of the security deposit.

The Tenant testified that they provided the Landlord with verbal notice that they were moving out of the rental unit with 10 Days' Notice. The Tenant testified that rent for November 2016, was paid in full and the Tenants should be entitled to recover ½ a months rent.

Analysis

Section 50 of the Act states if a Landlord gives a Tenant a 2 Month Notice to End tenancy, the Tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the Landlord's notice, and the Landlord must refund any rent paid for a period after the effective date of the Tenant's notice.

Section 51 (1) of the Act states that a Tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the Landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Security Deposit

I find that the Tenants moved out of the rental unit and provided their forwarding address to the Landlord on November 15, 2016.

I find that the Landlord failed to return the security deposit to the Tenants within 15 days after the Tenants vacated the rental unit.

There is no evidence before me that the Landlord applied for dispute resolution within 15 days of receiving the Tenants' forwarding address, and I find that there was no agreement from the Tenants that the Landlord could retain the security deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit.

I order the Landlord to pay the Tenants the amount of \$1,400.00

Compensation for 2 Month Notice

I find that the Tenants received a 2 Month Notice from the Landlord and they are entitled to the equivalent of one month's rent payable under the tenancy agreement. I find that the Landlord owes the Tenants \$1,400.00.

1/2 Month November Rent

I find that the Tenants did not provide the Landlord with written notice to end the tenancy. The Tenant testified that the Landlord was informed verbally, and I find that verbal notice to end a tenancy is not an approved method of giving notice to end a tenancy. In the circumstances, I find that the tenancy ended when the Tenants moved out on November 15, 2016; however, the Landlord is not responsible to return ½ a month's rent for November 2016.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$2,900.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to return the security deposit to the Tenants in accordance with section 38 of the Act. The Landlord failed to compensate the Tenants after serving a 2 Month Notice in accordance with section 51 of the Act.

I grant the Tenants a monetary order in the amount of \$2,900.00.

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: June 14, 2017

Residential Tenancy Branch