



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC

Introduction

On January 4, 2017, the Tenant submitted an Application for Dispute Resolution seeking a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, regulation, or tenancy agreement.

The matter was set for a conference call hearing. The Tenant attended the hearing; however, the Landlord did not. The Tenant testified that she served the Notice of hearing to the Landlord using Canada Post Registered Mail on January 7, 2017. The Tenant provided a copy of the registered mail receipt and tracking number as proof of service. I find that the Landlord was served with the Notice of the Hearing in accordance with sections 89 and 90 of the Act.

The hearing process was explained and the Tenant was asked if she had any questions. She provided affirmed testimony and was provided the opportunity to present her evidence, orally and in written and documentary form, and make submissions to me. The Tenant confirmed she provided a copy of her documentary evidence to the Landlord using registered mail.

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.

Issue to be Decided

- Is the Tenant entitled to compensation from the Landlord?

Background and Evidence

The Tenant testified that the tenancy began on September 1, 2015, as a month to month tenancy. The Tenant testified that rent in the amount of \$800.00 was to be paid on the first day of each month and that the Tenant paid the Landlord a \$400.00 security deposit.

The Tenant testified that the Landlord ended the tenancy by issuing a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated September 22, 2016. The Tenant provided a copy of the 2 Month Notice.

The Tenant testified that she moved out of the rental unit on November 30, 2016. The Tenant testified that she provided her forwarding address to the Landlord on November 29, 2016.

The Tenant testified that she paid her rent for the months of October 2016, and November 2016. She testified that the Landlord did not compensate her with the equivalent of one month's rent.

The Tenant testified that the Landlord returned the security deposit of \$400.00 to her on January 3, 2017, which is beyond the 15 days permitted under the Act.

The Tenant is seeking compensation in the amount of \$1,200.00 comprised of \$800.00 for one month's rent, and a \$400.00 penalty for the late return of the security deposit.

The Landlord was served with the Notice of Hearing but failed to appear at the hearing.

Analysis

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 above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant provided her forwarding address to the Landlord on November 29, 2016. There is no evidence before me that the Landlord applied for dispute resolution within 15 days of the end of the tenancy or after receiving the Tenant's forwarding address. I find that there was no agreement from the Tenant 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 Tenant double the amount of the security deposit and pet damage deposit. I order the Landlord to pay the Tenant \$400.00.

I find that the Tenant received a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated September 22, 2016, and the Landlord failed to compensate the Tenant the amount of one month's rent. I order the Landlord to pay the Tenant the amount of \$800.00.

The Tenant has established a claim in the amount of \$1,200.00. I grant the Tenant a monetary order in the amount of \$1,200.00. 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 Tenant within 15 days of the end of the tenancy. The Landlord failed to compensate the Tenant after issuing a 2 Month Notice To End Tenancy For Landlord's Use Of Property.

The Tenant is granted a monetary order in the amount of \$1,200.00. 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.

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 27, 2017

Residential Tenancy Branch