



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF (Landlord's Application)
 MNSD, FF (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution filed by the Landlord on June 14, 2017 and by the Tenants on August 11, 2017.

The Landlord applied to retain the Tenants' security deposit and to recover the filing fee. The Tenant applied for the return of double her security deposit and to recover the filing fee.

An agent for the Tenant appeared for the hearing to provide submissions on behalf of the Tenant. There was no appearance for the Landlord despite the conference call line being left open for ten minutes to give opportunity for the Landlord to appear and present evidence for his application. As a result, I dismissed the Landlord's application and continued to hear the Tenant's application as follows.

The agent explained that the Tenant had served the Landlord with her application by registered mail on August 11, 2017. The agent provided the Canada Post tracking number into oral evidence to verify this method of service, which is detailed on the front page of this Decision.

The agent explained that the Canada Post website shows that the documents were received and signed for by the Landlord on August 14, 2017. Based on the undisputed evidence before me, I find the Tenant completed service of the required documents to the Landlord pursuant to Section 89(1) (c) of the Act. The hearing continued in the absence of the Landlord and heard the undisputed evidence of the Tenant as follows.

Issue(s) to be Decided

Is the Tenant entitled to the return of her security deposit?

Background and Evidence

The agent explained that this tenancy started on January 31, 2017 for a fixed term of one year which then continued on a month to month basis thereafter. Rent was payable by the Tenant in the amount of \$1,200.00 on the first day of each month. The Tenant paid a security deposit of \$600.00 which the Landlord still retains in trust.

The agent explained that the tenancy ended on May 25, 2017 after the Tenant had provided written notice. On June 14, 2017, the Tenant sent the Landlord a letter detailing her forwarding address. The agent referred me to this letter and explained that it had been served to the Landlord by registered mail. The Canada Post tracking number for this item was provided into written evidence and the Canada Post website shows that this was received by the Landlord on June 30, 2017.

The agent explained that the Landlord failed to complete a move-in or move-out Condition Inspection Report (CIR) for this tenancy. The agent confirmed that the Tenant had not given any permission for the Landlord to keep her security deposit and now claims for double the return of it.

Analysis

The *Residential Tenancy Act* (the "Act") contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act also provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the evidence before me that this tenancy ended on May 25, 2017. I also accept the undisputed evidence that the Tenant provided the Landlord with a forwarding address in writing by registered mail. The evidence before me is that this was received by the Landlord on August 30, 2017. While it appears the Landlord filed his application prior to receiving the Tenant's forwarding address, the Landlord failed to appear for this hearing. Therefore, I consider the Landlord to have not filed the Application. Furthermore, Sections 23 and 35 of the Act states that a tenant and landlord together must inspect the condition of the rental unit at the start and end of a tenancy. These provisions of the Act continue to state that the landlord must complete the CIR in

accordance with the regulations by providing the tenant opportunity to take part in it and that the CIR must be signed.

Sections 24(2) and 36(2) states that the right of the landlord to claim against the security or pet damage deposit for damage to the rental unit is extinguished if the landlord fails to comply with the reporting requirements as laid out in Section 23 and 35 of the Act.

In this case, the Landlord had applied to keep the Tenant's security deposit for damage to the rental unit and there is no evidence before me that the Landlord completed a CIR. Therefore, I am only able to conclude the Landlord failed to meet the reporting requirements of the Act. As a result, I must find the Landlord's right to file an application against the Tenant's security deposit was extinguished in any case.

Policy Guideline 17 to the Act consists of a section titled "Return or Retention of Security Deposit through Arbitration." Point number 3 of this section states that an arbitrator will order the return of double the deposit if the landlord has made a claim and the right to make a claim has been extinguished under the Act. Therefore, I have no discretion and find that the Landlord must pay the Tenant double their security deposit in the amount of \$1,200.00.

As the Tenant has been successful in her Application, I also grant the \$100.00 filing fee pursuant to Section 72(1) of the Act. As a result, the Tenant is issued with a Monetary Order for a total amount of \$1,300.00.

This order must be served on the Landlord and may be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment.

Copies of the order are attached to the Tenant's copy of this Decision. The Landlord may also be held liable for any enforcement costs incurred by the Tenant.

The Tenant claimed for mailing costs. The agent was informed during the hearing that the Act does not permit any party to be awarded costs associated with preparation for dispute resolution. Therefore, this portion of the Tenant's claim is dismissed without leave.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Tenant is granted a Monetary Order for \$1,300.00 which comprises double the security deposit and the Tenant's filing fee.

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

Dated: December 04, 2017

Residential Tenancy Branch