



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested return of double her security deposit.

The hearing was conducted by teleconference on December 11, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to return of double the security deposit paid?

Background and Evidence

The Tenant testified that the tenancy began November 1, 2009. She confirmed that she paid a security deposit in the amount of \$300.00. The tenancy ended March 31, 2017. The Tenant stated that she sent the Landlord her forwarding address in writing on March 15, 2017.

The Tenant also claimed that the Landlord did not perform a move in or move out condition inspection.

The Tenant confirmed that the Landlord did not apply for dispute resolution within 15 days of the end of the tenancy, nor did she return the funds.

In response to the Tenant's claim, the Landlord testified that she received the Tenant's forwarding address a couple months after the tenancy ended. She also confirmed she did not return the Tenant's deposit or make an application for dispute resolution within 15 days of receipt of the Tenant's forwarding address.

The Landlord submitted documentation relating to the condition of the rental unit, purportedly in support of her claim for compensation, for cleaning and damage to the rental unit. The

Analysis

The Tenant applies for return of double her security deposit pursuant to section 38 of the *Residential Tenancy Act* which provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

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

The evidence confirms that the Tenant did not agree to the Landlord retaining any portion of their security deposit.

Although neither party was able to be specific as to the date, I find that the Landlord received the Tenant's forwarding address in writing approximately two months after the tenancy ended. The Landlord conceded that she failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlord also extinguished her right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant and an Order from an Arbitrator.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$600.00**, comprised of double the security deposit (2 x \$300.00).

If the Landlord believes she is entitled to monetary compensation from the Tenant, she must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. As noted during the hearing, she may still make an application for dispute resolution, however, this does not affect my Order that she pay the Tenant \$600.00.

Conclusion

I grant the Tenant a formal Monetary Order in the amount of **\$600.00**. She must serve the Order on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the 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: December 11, 2017

Residential Tenancy Branch