



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, FF*

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of the security deposit and for the recovery of the filing fee.

The tenant was represented by her agent DG. Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on August 11, 2017, to the address provided by the landlord. The tenant provided a tracking number. The tenant testified that the package was returned as unclaimed.

Despite having been served the notice of hearing, the landlord did not pick up the package and therefore did not attend the hearing. The tenant's agent attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

The tenant's agent DG testified that the tenant resides out of Canada and had enrolled as a foreign student for a course that was four months in length for the period of January 2017 to April 30, 2017. The tenant looked on line for a rental unit in close proximity to the school and found the rental unit on a popular website.

The tenant viewed the photographs of the rental unit as advertised and began communicating with the landlord by email. The parties came to an agreement for a tenancy that would begin on January 01, 2017 for a fixed term of four months. The monthly rent was \$1,100.00 and the tenant was required to pay a security deposit of \$550.00. The tenant provided proof of having sent \$550.00 to the landlord which he accepted on December 30, 2016.

The tenant arrived at the rental unit on January 02, 2017 and found that the unit was far smaller than what was advertised. The tenant described it as a hallway located on the ground floor that was blocked off on both ends by doors. DG testified that the parties discussed the size of the rental unit and the landlord agreed that he had posted a picture of the upper suite in error. The landlord offered the upper suite to the tenant at an increased rent. The tenant declined as she could not afford the increased rent.

However the tenant's circumstances were such that she was forced to move into the lower suite until she could find something suitable. The tenant found a rental unit and moved out on January 07, 2017. The parties continued to communicate by email and the landlord refused to return the security deposit.

The tenant contacted the Residential Tenancy Branch and was informed that she had to provide the landlord with her forwarding address in writing. The tenant did so by email on May 30, 2017 and the landlord responded to the email letting the tenant know that he would not be returning the deposit. The tenant filed copies of the back and forth emails. On August 11, 2017, the tenant made this application.

Analysis

Based on the sworn testimony of the tenant's agent, the documents filed into evidence and in the absence of contradictory evidence, I find that the landlord misrepresented the rental unit in his advertisements. Accordingly the tenant chose to rent the upper unit as advertised online and paid a deposit for the advertised rental unit. Upon arrival from her home country, the landlord offered her the advertised rental unit at a higher price which was not affordable.

The parties entered into a tenancy agreement on December 30, 2016 at which time the tenant paid the security deposit. Once the security deposit is paid, the tenancy is considered started. However in this case the parties entered into a tenancy agreement for the upper suite but at the start of the tenancy the landlord offered the tenant a smaller unit on the lower floor and wanted additional rent for the upper unit that the tenant signed up for. Based on the testimony of the DG, I find that the landlord breached the tenancy agreement.

I further find that the tenant was misled by the advertisement and the suite she had booked was not the one that was offered to her upon arrival. I also find that the tenant had no choice other than to move into the smaller rental unit until she could find alternative accommodation. The tenant spent seven days in the smaller rental unit and therefore owes prorated rent for those days in the amount of \$248.36

On May 30, 2017 the tenant emailed the landlord her forwarding address with a request for the return of her deposit.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of the tenant and in the absence of any contradictory evidence, I find that as of August 11, 2017, the landlord had not made application for dispute resolution and had also failed to repay the security deposit and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the base amount of the security deposit.

The landlord collected a deposit of \$550.00 from the tenant and is obligated under section 38 to return double this amount (\$1,100.00). Since the tenant has proven her claim, she is also entitled to the recovery of the filing fee (\$100.00).

Overall the tenant has established a claim of \$1,200.00 and owes the landlord \$248.36 for prorated rent. I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for the balance of **\$951.64**. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the tenant a monetary order for **\$951.64**.

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: February 07, 2018

Residential Tenancy Branch