



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Preliminary and Procedural Matters – Landlord's request for adjournment/Clarification of issues in dispute

The landlord's agent requested an adjournment to the hearing on the grounds that the 73 year old landlord suffered a stroke in December 2017 and is currently undergoing rehabilitation.

The tenancy ended July 28, 2017 and this application was filed on August 24, 2017. The landlord has not filed any application to retain the tenant's security deposit.

The landlord's adjournment request was denied as I find it would unduly prejudice the tenant as the landlord had ample opportunity to file an application to retain the deposit prior to the landlord suffering a stroke. As the landlord has not made such an application, the only outstanding issue in this application was whether or not the tenant provided a forwarding address to the landlord in writing.

The tenant withdrew her application for monetary compensation for an alleged illegal rent increase.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy ended on July 28, 2017. The tenant paid a security deposit of \$450.00 at the start of the tenancy which the landlord continues to hold.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant provided a forwarding address in writing to the landlord on July 28, 2017.

The landlord's agent acknowledged receiving a forwarding address in writing and not returning the security deposit or filing an application to retain the deposit within 15 days.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenant did provide a forwarding address in writing to the landlord. The tenant's security deposit was not refunded within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenant's claim for return of the security deposit and award an amount of \$900.00, which is double the original security deposit of \$450.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$1000.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1000.00. Should the landlord fail to comply with this Order, this 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: February 26, 2018

Residential Tenancy Branch