



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant for the return of the security deposit and the return of the filing fee paid for this application. The Tenant was present at the conference call hearing, while no one called in for the Landlord during the approximately 13 minute hearing.

As the Landlord was not in attendance at the hearing, the service of the Notice of Dispute Resolution Hearing (the "Notice of Hearing") was addressed. The Tenant testified that she sent the Notice of Hearing package and her evidence to the Landlord on September 22, 2017 by registered mail. A registered mail receipt was included in the evidence submitted to the Residential Tenancy Branch and the Canada Post website shows the package as accepted and signed for by the Landlord on September 25, 2017. This registered mail tracking number is referenced on the first page of this decision.

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.

Preliminary Matters

The spelling of the Respondent's last name on the application was addressed during the hearing as it was spelled differently on the application than on the evidentiary material submitted. The name on the evidentiary material is assumed to be correct as it included documents that the Landlord completed. The Tenant agreed that the application could be amended to change the spelling of the Landlord's last name. As

such, this change has been made in accordance with Section 64(3)(c) of the *Residential Tenancy Act* (the *Act*).

Issue(s) to be Decided

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

Background and Evidence

The Tenant moved into the rental unit on August 20, 2016. Monthly rent was set at \$6,000.00 and a security deposit of \$3,000.00 was paid on August 16, 2016. The Tenant and Landlord completed a Condition Inspection Report upon move in.

The Tenant moved out on July 31, 2017 and a move out Condition Inspection Report was completed on this date. The Tenant agreed to the Landlord withholding an amount of \$1,500.00 from the security deposit to cover gardening costs. The Tenant reports a disagreement with the Landlord about who should pay to have the rental unit professionally cleaned upon move out; however, the Tenant did not agree to any other amount being withheld by the Landlord from the security deposit, other than the \$1,500.00 for gardening costs.

The Tenant provided her forwarding address in writing on the move-out Condition Inspection Report, but testified that she has not received any payment from the Landlord since July 31, 2017 when her forwarding address was provided. The Condition Inspection Report with her forwarding address was provided as part of the evidentiary material.

The Tenant testified that she had not received any Notice of Hearing documents from the Landlord, indicating that the Landlord has not applied for Dispute Resolution regarding this matter.

Analysis

I refer to Section 38(1) of the *Act*:

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.**

As per the above, I find that the Tenant provided her forwarding address in writing on July 31, 2017 and the Landlord did not repay the remainder of her security deposit within the fifteen (15) day timeframe required by the *Act*, nor did the Landlord apply for dispute resolution.

As per Section 38(6)(b):

(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.**

As it was determined that the Landlord did not comply with Section 38(1), the Tenant is entitled to double the amount of her security deposit, in accordance with Section 38(6)(b) of the *Act*.

As the Tenant agreed in writing to \$1,500.00 of the security deposit being withheld by the Landlord, that leaves a remainder of \$1,500.00 that the Landlord is still in possession of. With the doubling of this amount as per above, I find that the Tenant is entitled to the return of the security deposit for an amount totalling \$3,000.00.

As the Tenant was successful in her application, I also award the recovery of the \$100.00 filing fee, for a total monetary award of \$3,100.00.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order in the amount of \$3,100.00** for the return of double the remainder of the security deposit and for the recovery of the filing fee for this application. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. 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: April 23, 2018

Residential Tenancy Branch