



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the tenant pursuant to *Residential Tenancy Act* for a monetary order for the return of double the security and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony and to make submissions. Both parties represented themselves.

As both parties were in attendance I confirmed service of documents. The tenant confirmed receipt of the landlord's evidence. The landlord stated that she received the notice of hearing but did not receive any additional documentation from the tenant. Accordingly the additional document which consisted of a copy of a cheque, was not used in the making of this decision. I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

Issue to be Decided

Did the tenant provide the landlord with his forwarding address in writing? Did the landlord return the security in a timely manner? Is the tenant entitled to the return of double the deposit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

Both parties agreed to the following: The tenancy started on November 01, 2013 and ended on October 31, 2015. The monthly rent was \$1,000.00. Prior to moving in the tenant paid \$500.00 as a security deposit. The tenant made this application in a timely manner - just one day shy of the end of the two year legislated time frame

The landlord agreed that she received the tenant's forwarding address in writing at the end of tenancy. The parties did a walk through to determine the condition of the rental

unit at the end of tenancy and agreed to a deduction of \$90.00 off the security deposit of \$500.00. Accordingly the landlord wrote a cheque out in favour of the tenant for the amount of \$410.00.

The landlord stated that she felt pressured by the tenant to write a cheque and after the tenants left she realized that the rental unit was not clean and was in need of repairs. The landlord filed photographs of the condition of the rental unit. The landlord proceeded to put a stop payment on the cheque and informed the tenant that there was far more damage than the amount of the security deposit.

The tenant stated that he gave the landlord two years less a day to pay back the deposit and when she did not, he filed this application. The tenant is seeking the return of double the deposit plus the recovery of the filing fee. The tenant confirmed a deduction of \$90.00 for the damages that were agreed to at the end of tenancy.

Analysis

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.

In this case, the tenant sent the landlord his forwarding address by email on or about October 31, 2015. By October 30, 2017, the tenant did not receive his deposit and made this application. Therefore, I find that the landlord failed to repay the deposit or make an application for dispute resolution within 15 days of the receipt of the forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The total security deposit paid was \$500.00. Accordingly, the landlord must return \$1,000.00 to the tenant. Since the tenant has proven his case he is also entitled to the recovery of the filing fee of \$100.00. The tenant agreed to a deduction of \$90.00 and therefore the tenant has established a claim of \$1,010.00

In regards to the landlord's claims relating to loss that she may have suffered, I am not able to hear or consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. The landlord is at liberty to file her own application for damages against the tenant.

However the landlord must be informed that the limitation period under legislation provides that an application for arbitration under the *Residential Tenancy Act* must be filed within two years of the date that the tenancy to which the matter relates ends

Overall the tenant has established a claim of \$1,010.00. Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount which represents double the security plus the filing fee minus the damages agreed to by the tenant. 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 in the amount of **\$1,010.00**.

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: June 05, 2018

Residential Tenancy Branch