



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting the return of her security deposit. The Tenant also requests an order for payment of the filing fee.

The Tenant appeared for the scheduled hearing; the Landlord did not call into the teleconference line, which I left open for 10 minutes past the scheduled hearing time of 1:30 p.m. I confirmed that the Notice of Hearing had the proper call-in information and that the Tenant and I were the only participants. I find that the Notice of Hearing was properly served and that evidence was submitted by the Tenant to the Landlord by delivering it in person to an adult at his residence. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and the participant was given an opportunity to ask any questions about the process. The participant was given a full opportunity to present affirmed evidence and to make submissions on the relevant evidence provided in this hearing.

Issues to be Decided

Is the Tenant entitled to a monetary order for the return of her security deposit, pursuant to section 38 of the Residential Tenancy Act (“Act”)?

Is the Tenant entitled to payment of the \$100.00 filing fee, pursuant to section 72 of the Act?

Background and Evidence

The Tenant states that the tenancy began May of 2017 for \$900.00 per month; a security deposit of \$450.00 was paid. The tenancy ended November 15, 2017. The Tenant provided her forwarding address on November 24th by way of a written text message, which shows confirmation that the message was received; a copy of that message was submitted into evidence. The reply indicated, "*Hey what is your mailing address. I will write you a cheque, you will receive it before the end of the month.*" The Tenant then confirmed her forwarding address and the amount paid for the security deposit. The Tenant states that she tried to follow up but received no payment at her new address, so she filed this Application on December 12, 2017.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply. As I am satisfied that the Landlord had notice of this hearing and chose not to attend, I continued with the hearing in his absence.

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or file an application to claim against it. Section 38(4)(a) of the Act also provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept that this tenancy ended on November 15, 2017 and that the Landlord acknowledged receipt of the forwarding address which was provided in writing by the Tenant on November 24, 2017.

Therefore, the Landlord would have had 15 days from November 24, 2017 onwards, to deal properly with the Tenant's security deposit pursuant to the Act. There is no evidence before me that the Landlord filed an application within the 15 days of receiving the Tenant's forwarding address or obtained written consent from the Tenant to withhold it. Accordingly, I must find the Landlord failed to comply with Sections 38(1) and 38(4)(a) of the Act.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenant by the Landlord. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of it or to make deductions from it, the landlord must comply with Section 38(1) of the Act and return the security deposit promptly.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant *double* the amount of the deposit. Based on the foregoing, I find the Tenant is entitled to double the return of their security deposit in the total amount of **\$900.00**.

As the Tenant has been successful in this Application, I also grant the **\$100.00** filing fee pursuant to Section 72(1) of the Act. As a result, the Tenant is issued a Monetary Order for a total amount of **\$1,000.00**.

Conclusion

The Landlord shall pay forthwith to the Tenant the sum of \$1,000.00.

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 22, 2018

Residential Tenancy Branch