



Dispute Resolution Services

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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 for the return of her security deposit and for payment of the filing fee.

One of the two named Landlords, “JT”, along with the Tenant, appeared for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was submitted by all parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

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.

Issues to be Decided

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

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

Background and Evidence

The tenancy began August 1, 2016 and ended on August 31, 2017. The rent was \$900.00 per month and a security deposit of \$450.00 was paid to the Landlords. A copy of the tenancy agreement and the security deposit cheque were submitted into evidence.

When the tenancy ended, there was a Condition Inspection completed and the Tenant provided her forwarding address in writing to the Landlords on August 31, 2017 to request the return of her deposit; the notice containing the forwarding address was provided by way of iMessage at 4:01 pm and a response from the Landlord was received at 4:01 pm to confirm. The Landlords subtracted \$150.00 for cleaning charges and returned the balance of \$300.00 by way of cheque to the Tenant, which was received September 5, 2017. The Landlords did not file an application to retain the rest of the security deposit and did not obtain the Tenant's consent to retain the security deposit they held on her behalf. The Tenant cashed the cheque in December of 2017 after reviewing her legal options.

The Landlord states that she is new to being a landlord and was unaware of the 15 day time restriction to return a security deposit or to file a claim for cleaning and damages. She presented evidence in form of statements, photographs and invoices pertaining to claims of dents in a refrigerator and damage to drywall. She claims that the stove needed considerable cleaning. The Landlord states that the Tenant did not request a move-in inspection report, something that she now completes with every new tenant.

The Tenant requests the return of the balance of her security deposit of \$150.00.

Analysis

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 the undisputed evidence that this tenancy ended on August 31, 2017.

While electronic messaging is not a recognized form of serving documents under the Act, I accept the Tenant's undisputed oral testimony and iMessage correspondence that the Landlords were put on notice of the Tenant's forwarding address on August 31,

2017. This is because the Landlord replied to that message on the same date which satisfies me that the Landlord was aware of the address. In addition, the Landlords provided a partial payment of the security deposit to the Tenant at the forwarding address shortly after the tenancy ended after deducting \$150.00 for cleaning and other charges.

The Landlords had 15 days from August 31, 201, to deal properly with the Tenant's security deposit pursuant to the Act. There is no evidence before me that the Landlords filed an application within 15 days of receiving the Tenant's forwarding address or obtained written consent from the Tenant to withhold any portion of the deposit. Therefore, I must find the Landlords failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlords are in the business of renting and have a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenant by the Landlords. At no time does a landlord have the authority to 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 file a dispute application.

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 security deposit less any payment received. The original security deposit is doubled to the sum of \$900.00, less the \$300.00 paid out, for a balance owing of **\$600.00**.

I am not prepared to address the claims for cleaning and damages that were submitted by the Landlords, as no claim was formally filed against the Tenant for my consideration. The Landlords remain at liberty to file a claim against the Tenants within any limitations set out in the Act.

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 \$700.00.

This order must be served on the Landlords and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlords fail to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlords shall pay forthwith to the Tenant the sum of \$700.00.

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: July 12, 2018

Residential Tenancy Branch