



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On December 1, 2017, the Tenant submitted an Application for Dispute Resolution for the Landlord to return of all or part of the security deposit, and to recover the filing fee for the Application.

The Tenant appeared at the hearing; however, the Landlord did not. The Tenant provided affirmed testimony that in early December 2017; she served the Landlord with the Notice of Hearing in person at the Landlord's place of work in the presence of a security guard. I find that that the Notice of Dispute Resolution Proceeding was sufficiently served to the Landlord for the purposes of the Act.

The hearing process was explained and the Tenant was asked if she had any questions. The Tenant provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and make submissions to me.

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.

Issues to be Decided

- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy commenced around April 2017, on a month to month basis. The Tenant testified that the tenancy ended on October 31, 2017. Rent in the amount of \$900.00 was due on the first day of each month. The Tenant paid the Landlord a security deposit of \$450.00.

The Tenant testified that she provided her forwarding address in writing to the Landlord on November 4, 2017, using registered mail. She testified that the Landlord picked up the Mail on November 11, 2017. The Tenant provided a copy of the letter containing her forwarding address and a copy of the registered mail receipt.

The Tenant testified that the Landlord did not return the security deposit or make a claim against it within 15 days of receiving her forwarding address.

The Tenant testified that there was no written agreement that the Landlord could keep the security deposit. She testified that she wanted to offer the Landlord \$100.00 for damage to a cabinet door but an agreement was never made.

The Tenant is seeking double the amount of the \$450.00 security deposit.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

I find that the Tenant provided their forwarding address to the Landlord by mail on November 4, 2017. There is no evidence before me that the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find

that there was no agreement from the Tenant that the Landlord could retain the security deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

I order the Landlord to pay the Tenant the amount of \$900.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$1,000.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord was personally served with the Notice of Hearing and failed to attend the hearing. The Landlord failed to return the security deposit and pet damage deposit to the Tenant in accordance with the legislation.

The Tenant is granted double the amount of the security deposit. I grant the Tenant a monetary order in the amount 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: July 16, 2018

Residential Tenancy Branch