



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking the return of double her security deposit and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Application or the Notice of Hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Issue(s) to be Decided

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

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The parties agreed in the hearing that the tenancy began on November 1, 2018, and ended on February 28, 2018. The parties agreed that rent was \$990.00 at the start of the tenancy and that a \$495.00 security deposit was paid by the Tenant. The parties

also agreed that the Tenant provided her forwarding address to the Landlord in writing on February 15, 2018.

The Tenant testified that at the time she filed her Application on March 16, 2018, the Landlord had yet to return her security deposit to her. However, both parties were in agreement that the Tenant subsequently received \$495.00 from the Landlord and as a result, the Tenant testified that she is currently only seeking \$495.00 from the Landlord; the balance owed to her for double the amount of her security deposit, less the \$495.00 already received.

The Tenant testified that as her forwarding address was received by the Landlord on February 15, 2018, in writing, and the tenancy ended on February 28, 2018, the Landlord therefore had until March 15, 2018, to return her security deposit to her. The Tenant stated that although she has now received \$495.00 from the Landlord as repayment for the security deposit, this amount was received by mail on March 19, 2018, in an envelope post-marked March 16, 2018. The Tenant stated that as the Landlord did not even mail the \$495.00 security deposit to her until after March 15, 2018, she is therefore entitled to double the amount of her deposit under the *Act*.

The Landlord testified that she thinks she mailed the \$495.00 security deposit to the Tenant on March 15, 2018, in compliance with the *Act* but cannot be sure. She testified that it was sent by regular mail and placed in a drop-box for mailing and therefore does not have a receipt as proof of the date it was mailed. The Landlord also stated that she did not file an Application with the Residential Tenancy Branch (the "Branch") seeking retention of the security deposit or have any cause to retain it. As a result, she stated that it was returned to the Tenant in compliance with the *Act*.

Although the Landlord testified that condition inspections were completed at both the start and the end of the tenancy, the Tenant testified that this is untrue as no move-in inspection was completed and the Landlord refused to complete an inspection with her on February 28, 2018, at the end of the tenancy. Although the Landlord provided a copy of correspondence to the Tenant stating that a condition inspection would be completed on March 15, 2018, she did not provide any further documentary evidence of that inspection, a final notice of inspection, if one was required, or any documentary evidence in regards to a move-in condition inspection. Further to this, the Landlord acknowledged that she did not complete any condition inspections reports.

Analysis

I accept the testimony of both parties that the tenancy ended on February 28, 2018, and that the Tenant's forwarding address was received in writing by the Landlord on February 15, 2018. Although the parties could not agree in the hearing about whether condition inspections were completed at the start and the end of the tenancy, ultimately there is no documentary or other evidence before me to suggest or demonstrate that the Landlord complied with sections 23(3) and 35(2) of the *Act* with regards to scheduling of the condition inspections and she acknowledged in the hearing that she did not complete either a move-in or a move-out condition inspection report. As a result, I am therefore satisfied that the Tenant has not extinguished her rights to the return of the security deposit under sections 24 or 36 of the *Act*, regardless of whether or not she attended or participated in either the move-in or move-out condition inspections purported to have been completed by the Landlord.

Pursuant to section 38(1) of the *Act*, I find that the Landlord had until March 15, 2018, to either file a claim with the Branch seeking retention of the Tenant's security deposit or return the security deposit to the Tenant. As the Landlord testified that she did not seek or have cause to retain the Tenant's security deposit under the *Act*, I find that she was therefore required to return it to the Tenant no later than March 15, 2018.

Although the Landlord stated that she believes she mailed the \$495.00 security deposit to the Tenant on March 15, 2018, she also stated in the hearing that she could not be sure of this date. Further to this, the Landlord did not provide any documentary evidence to support her testimony regarding the date the security deposit was mailed to the Tenant. On the other hand, the Tenant testified that the security deposit was not received by her until March 19, 2018, by mail, and provided a copy of the envelope in which the security deposit was received showing a post-mark of March 16, 2018. As a result, I find on a balance of probabilities that the \$495.00 security deposit was not mailed to the Tenant until March 16, 2018.

Section 38(6) of the *Act* states that if a landlord does not comply with subsection (1), the landlord must pay the tenant double the amount of the security deposit. As I have already stated above, I find that the Landlord was obligated to return the Tenant's security deposit no later than March 15, 2018, and that it was not mailed to her until March 16, 2018. As a result, I therefore find that the Landlord has failed to comply with section 38(1) of the *Act* and that the Tenant is entitled to double the amount of her security deposit pursuant to section 38(6) of the *Act*. As the amount of the Tenant's

security deposit was \$495.00, I find that she is therefore entitled to \$990.00, double the amount of her security deposit, less the \$495.00 already received.

As the Tenant was successful in her Application, I also find that she is entitled to recovery of the \$100.00 filing fee. Based on the above and pursuant to section 67 of the *Act*, the Tenant is entitled to a Monetary Order in the amount of \$595.00; \$990.00 in compensation pursuant to section 38(6) of the *Act*, plus \$100.00 for recovery of the filing fee, less the \$495.00 already received,.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$595.00. 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: October 12, 2018

Residential Tenancy Branch