



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KEKINOW NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent and authorization to retain the security deposit. The tenant appeared at the hearing; however, there was no appearance on part of the landlord although I waited at least 10 minutes to enable the landlord to appear.

The tenant confirmed that the landlord served her with notification of this proceeding and the tenant was prepared to respond. Since the landlord failed to appear and present its claims against the tenant I dismissed the landlord's application without leave to reapply.

The tenant requested an order for return of the security deposit since the landlord is still holding it. Residential Tenancy Policy Guideline 17: Security Deposit & Set-Off provides as follows, in part:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act¹⁴. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Having dismissed the landlord's application in its entirety, and in keeping with policy guideline 17, I proceed to consider whether the security deposit should be returned to the tenant.

Issue(s) to be Decided

Is the tenant entitled to an order for return of her security deposit?

Background and Evidence

The tenant testified that she paid a security deposit of \$500.00. The tenancy agreement provided to me by the landlord shows that the tenant was required to pay a security deposit of \$500.00. The landlord had provided a letter dated February 26, 2018 as evidence indicating the landlord was refunding the tenant's security deposit to her; however, the tenant stated she did not receive a refund and there was no other proof the payment was actually received by the tenant.

The condition inspection report provided by the landlord for this proceeding, and the tenant's testimony during the hearing, confirmed that the tenant participated in the move-in inspection and the move-out inspection with the landlord and the tenant provided a forwarding address to the landlord that was recorded in writing on the day of the move-out inspection. Also, the tenant did not authorize the landlord to make any deduction from the security deposit on the move-out inspection report, or any other document.

Analysis

Based on the unopposed evidence before me, I accept that the tenant paid a security deposit of \$500.00. I have been provided inconsistent evidence as to whether the landlord refunded the security deposit to the tenant. If the landlord has already refunded the security deposit to the tenant, the cancelled cheque or other proof of payment shall serve as satisfaction that the security deposit has been refunded; however, in the event the tenant did not cash a refund cheque or otherwise receive the security deposit I provide the following findings.

Upon review of the condition inspection report, I note that the tenant did not authorize the landlord to retain any amount from her security deposit at the end of the tenancy.

I have considered whether the tenant extinguished her right to return of the security deposit. A tenant extinguishes their right to return of the security deposit if the tenant fails to participate in the move-in or move-out inspection with the landlord. The tenant

met her obligation to participate in the move-in and move-out inspections with the landlord as evidence by the condition inspection reports provided by the landlord.

A tenant is required to provide a forwarding address, in writing, before the tenant is entitled to return of the security deposit. The move-out inspection report contains the tenant's forwarding address.

In light of the above, and considering the landlord's claim against the tenant's security deposit has been dismissed, I find the tenant is entitled to return of the \$500.00 security deposit. If the landlord has not already refunded the tenant's security deposit to her, or it has not otherwise been received by the tenant, I order the landlord to return the security deposit to the tenant. I provide the tenant with a Monetary Order in the amount of \$500.00 to serve and enforce upon the landlord in the event the landlord has not already refunded the security deposit to the tenant.

Conclusion

The landlord's claims against the tenant are dismissed without leave to reapply due to the landlord's failure to appear at the hearing.

The tenant is entitled to return of the \$500.00 security deposit and the landlord is order to refund that amount to her if payment has not already been made. The tenant is provided a Monetary Order in this amount to ensure payment is made.

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: September 22, 2018

Residential Tenancy Branch