



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

The landlord (respondent) did not attend this hearing, although I left the teleconference hearing connection open until 1:55 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. on December 18, 2018. The tenant's executor (hereinafter called 'the tenant' and her witness attended the hearing and gave sworn testimony. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided evidence that they had served the landlord with the Application for Dispute Resolution dated August 13, 2018 by registered mail and personally with the forwarding address with a witness M.S. present on December 10, 2018. The Application is noted as delivered on the postal tracking system. I note section 1 of the Act defines "tenant" as including the estate of a deceased tenant. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to the return of double the security deposit according to section 38 of the Act?

Background and Evidence

Only the tenant and witness D.J. attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said she had looked after the deceased tenant for many years with the help of her mother. She had lived with him for the past 10 years as his health deteriorated with a heart attack, broken hip and cancer. Their rent was \$900 a month with a security deposit of \$450 and the tenancy commenced September 12, 2016. The landlord refused to take any form of payment other than cash, he refused to have a tenancy agreement or to issue receipts as he said he wanted no records. On or about November 12, 2018, the tenant died and

the landlord entered with his own key and demanded this lady/caregiver leave immediately. She and a witness told him she was the executor and beneficiary of the estate and she needed to arrange the funeral and other matters. She provided a copy of the will and a lawyer's letter confirming she is the beneficiary and executor. She said the landlord became aggressive and allowed his son and also the estranged son of the deceased to enter and threaten her. She and a witness had to call the Police. Her witness confirmed these facts in a written statement. She offered to pay rent for December 2017 but the landlord said he just wanted them out.

The tenant cleaned the unit and moved the deceased's belongings about December 10, 2017. The landlord refused to do a move-out inspection and the tenant provided her forwarding address in writing. The landlord said she would get no money back from the security deposit. Her witness, M.S., confirmed these events in a written statement. The tenant's deposit has never been returned and they gave no permission to retain it.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

On preponderance of the relevant evidence for this matter;

Section 38(1) of the Act provides as follows (**emphasis mine**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1) (d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on December 10, 2017 and is therefore liable under Section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the
landlord

38(6)(a) may not make a claim against the security deposit
or any pet damage deposit, and

38(6)(b) **must** pay the tenant double the amount of the
security deposit, pet damage deposit, or both, as
applicable.

The landlord currently holds a security deposit of \$450 and was obligated under Section 38 to return this amount if they determined not to seek its retention through Dispute Resolution. The amount which is *doubled* is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$900.00.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$900.00**. Her filing fee was waived. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court. **This Decision is final and binding on both parties.**

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: December 18, 2018

Residential Tenancy Branch