



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for the return of double the security deposit, for compensation for loss or damage under the Act, regulations and tenancy agreement and to recover the filing fee.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on September 20, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double her security deposit?
2. Is the Tenant entitled to compensation for loss or damage?
3. Is the Tenant entitled to recover the filing fee from the Landlord?

Background and Evidence

This tenancy started on June 15, 2016, as a 6 month tenancy and then continued on a month to month basis. The tenancy ended August 31, 2018. Rent was \$800.00 payable on the 1st day of each month. The Tenant paid a security deposit of \$400.00 on June 10, 2016. The Tenant and Landlord agreed no condition inspection reports were completed for this tenancy.

The Tenant said that she moved out of the rental unit on August 31, 2018 and gave the Landlord her forwarding address in writing on July 30, 2018 with her notice to move out of the rental unit. The Tenant said the Landlord has not returned her security deposit and has stopped communicating with the Tenant. The Tenant continued to say that she tried to get the Landlord to do a move out walk through but the Landlord did not participate. The Tenant said she and her Advocate cleaned the unit and repaired any

damage to the unit except for normal wear and tear. The Advocate F.B. said that he cleaned the unit and repaired any damage to the unit. The Tenant provided photographs of the rental unit at move out and said the photos show the unit was clean and in good condition when she left. The Tenant continued to say that because the Landlord would not communicate with her and the Landlord texted her that the Landlord was not returning the deposit due to damage to the unit the Tenant said she made this application for double the security deposit in the amount of \$800.00. As well, the Tenant said she hope to recover the filing fee of \$100.00 from the Landlord if she is successful.

The Tenant's Advocate said the Landlord has not made an application to the Residential Tenancy Branch to retain the security deposit and he believes the Landlord had no intension of returning the deposit at any time.

The Landlord said that she is a new Landlord and she did not know about the condition inspection reports. Further the Landlord said the unit was new when the Tenant moved in and the Tenant damaged the windows and left holes in the walls. As a result of the damage the Landlord said she hired a contractor at \$2,200.00 to repair the damage. (It should be noted no invoices were submitted with the Landlord's evidence).

The Landlord continued to say that she received the Tenant's one month notice to end the tenancy on July 30, 2018, but there was no forwarding address in the text message. The Landlord confirmed that she texted the Tenant that she would not be returning the security deposit because of damage to the rental unit. The Landlord confirmed that she did not make an application to retain the Tenant's security deposit.

Further the Tenant said that communications with the Landlord were done by text message and this was the normal way they communicated.

The Parties were given an opportunity to settle this dispute, but no agreement was achieved, so the Parties will abide by the Arbitrator's decision.

The Landlord said in closing that there was damage to the unit so she had the right to keep the security deposit. As well, because she is a first time landlord she did not understand the rules and obligations of being a landlord and she hope that she will not be penalized for it. The Landlord said she has learned things about being a landlord through this process.

The Advocate said in closing the Tenant has tried on many occasions to work with the Landlord but the Landlord has been difficult and uncooperative. The Advocate said the Landlord stopped communicating with the Tenant and the Landlord would not return the security deposit or make an application to retain the deposit. The Advocate said the Landlord has not complied with the Act.

The Tenant gave affirmed testimony for the second time that she gave the Landlord her forwarding address in Saskatchewan with the notice to end tenancy on July 30, 2018.

The Landlord said that she received the notice to end tenancy on July 30, 2018, but there was no forwarding address in that message.

Neither party could find the message on their phones. The Tenant said she has a new phone and maybe the message was not transferred. The Landlord said she may have deleted it.

Analysis

Section 24 (2) of the Act says if a Landlord does not complete and sign a move in condition inspection report then any claim the Landlord has against the Tenant's security deposit for damage is extinguished.

Consequently as the Landlord did not complete and sign condition inspection reports the Landlord's claims against the Tenant's security deposit for damage is extinguished. I find the Landlord has no right to retain the Tenant's security deposit.

Further:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (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;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

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

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

In this situation the dispute and amount of compensation the Tenant is entitled to comes down whether or not the text message on July 30, 2018 included the forwarding address for the Tenant or not. Both parties gave affirmed testimony. The Tenant said she have the Landlord her forwarding address on July 30, 2018 with the notice to end tenancy. The Landlord said she received the message, but it did not have the forwarding address in it.

First, I accept that that normal communications between the parties were done by text message, therefore I accept the use of text messaging as written communications. Secondly, both parties agree the Tenant sent a texted to the Landlord on July 30, 2018 ending the tenancy. The Landlord confirmed receiving this message. Neither party provided definitive evidence to prove that the text had or did not have the forwarding address in it; therefore I must examine the credibility of the parties' actions to make a decision. The Landlord has not complied with the Act and regulations on a number of points The Landlord did not have a tenancy agreement that defines the tenancy as required by the Act. The Landlord did not complete condition inspection reports and did comply with the Act in handling the security deposit. Consequently, on the balance of possibilities I accept the Tenant's testimony that the text message of July 30, 2018 had the Tenant's forwarding address in it.

I accept the Tenant's testimony that she gave the Landlord a forwarding address in writing on July 30, 2018. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and grant an order for double the security deposit of \$400.00 in the amount of $2 \times \$400.00 = \800.00 .

Further as the Tenant has been successful in this matter I order the Tenant to recover the filing fee of \$100.00 from the Landlord.

I award the Tenant a monetary Order for \$800.00 as compensation for the security deposit plus the \$100.00 filing fee for a total of \$900.00.00.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 72 of the Act, I grant a Monetary Order for \$900.00 to the Tenant. The Order must be served on the Respondent and is enforceable through the Provincial Court 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: January 08, 2019

Residential Tenancy Branch