



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 1:50 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant's step father testified that on February 28, 2019, he personally served an agent of the landlord with a copy of the Application for Dispute Resolution and Notice of Hearing at the landlord's business office address provided for in the tenancy agreement.

I am satisfied that the landlord was sufficiently served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing for the purposes of this Act. The hearing proceeded in the absence of the landlord.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to compensation for other loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties entered into a written tenancy agreement on October 14, 2018. The tenancy was to begin on November 1, 2018 with a monthly rent of \$1600.00 paid on the 1st of each month. On October 16, 2018 the tenant paid an \$800.00 security deposit and \$800.00 for ½ of November 2018 rent.

The tenant testified that after the deposit was paid, the landlord refused to allow her to take possession of the rental unit and would not provide her with keys to the unit. The tenant testified the landlord was requesting the balance of November 2018 rent before providing her with the keys to the unit. The tenant testified that the landlord was requesting the above amount on October 31, 2018 even though the tenancy agreement did not require it to be paid until November 1, 2018.

The tenant is claiming return of the security deposit. Although not specifically checked off in the application, it is clear from the tenant's application that she is also seeking to recover the ½ month's rent paid for November 2018. A receipt for payment of these amounts to the landlord was submitted as evidence.

The tenant's stepfather testified that on December 22, 2018 a forwarding address was provided to the landlord by registered mail, regular mail and also in person to the landlord's address as per the tenancy agreement. The tenant provided a registered mail receipt and a copy of the letter dated December 22, 2018 as proof of service of a forwarding address.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenant did provide a forwarding address in writing to the landlord. The tenants' security deposit was not refunded within fifteen days of the end of the tenancy or the date a forwarding address was provided as required by section 38 of the Act. The

landlord did not have written authorization to retain the security deposit or file an application to claim against the deposit within fifteen days; therefore, the doubling provisions of section 38 apply.

I allow the tenant's claim for return of the security deposit and award an amount of \$1600.00, which is double the original security deposit of \$800.00.

As the landlord breached the tenancy agreement by not allowing the tenant to take possession of the unit on November 1, 2018 as agreed, I also order the landlord to return to the tenant the \$800.00 rent paid for November 2018.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$2500.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2500.00. 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: June 06, 2019

Residential Tenancy Branch