



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and her partner were present for the teleconference hearing although only the Tenant presented testimony and evidence. The Landlord was also present and confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence by registered mail. The Landlord did not submit any evidence prior to the hearing. Neither party brought up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

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

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began on September 1, 2017 and ended on August 31, 2018. Rent was \$2,400.00 per month and a security deposit of \$1,200.00 was paid at the outset of the tenancy. The Landlord is still in possession of the full security deposit amount.

The Tenant testified that she asked for her security deposit back and was told she would receive it later but noted that she has still not received any amount. She stated that she provided her forwarding address to the Landlord by mail on September 4, 2018. The Tenant submitted a photo of the letter with her forwarding address as well as a photo of the envelope addressed to the Landlord.

The Tenant stated that there was a mould issue in the rental unit prior to moving out and due to this the Landlord agreed that the Tenant could pay half the rent for August 2018. She stated that the Landlord was away at the time so sent her friend to collect rent for August 2018. The Tenant submitted copies of the text message communication with the Landlord at this time which includes texts from the Landlord advising the Tenant to pay the rent to a friend. The Tenant stated that she paid \$1,200.00 for August 2018, but she was still expecting her security deposit back. The Tenant stated that no move-in or move-out inspection was completed.

The Landlord testified that the Tenant did not have permission to only pay half of the rent for August 2018 but since she only received \$1,200.00, the security deposit was to be put towards the remainder of the rent for August 2018. She stated that the Tenant told her to put the security deposit towards the remainder of the rent but that nothing was put into writing. The Tenant denied that she gave permission for this and instead stated that she was provided permission to pay only half of the rent this month.

The Landlord stated that she received the Tenant's letter with her forwarding address that was sent on September 4, 2018. She stated that the deposit would have been returned if the Tenant paid the other half of the rent for August 2018.

Analysis

I refer to Section 38(1) of the *Act* which states the following:

- 38 (1) 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.

I accept the testimony of both parties that the tenancy ended on August 31, 2018 and that the Tenant's forwarding address was mailed on September 4, 2018. As the Landlord did not return the security deposit and I have no evidence before me that she filed an Application for Dispute Resolution against the security deposit, I find that the Landlord was not in compliance with Section 38(1) of the *Act*.

However, I also note that Section 38(4) of the *Act* states that a landlord may retain an amount from the security deposit that a tenant has agreed to in writing. Although the parties were not in agreement regarding how much rent was to be paid for August 2018, I do not find any evidence to establish that the Tenant provided permission in writing for the Landlord to retain the security deposit towards rent. Had the Landlord believed that the Tenant owed money for August 2018 rent, she had the right to file an Application for Dispute Resolution for the unpaid rent.

As the issue of unpaid rent is not the matter before me I decline to make a finding on whether the Landlord provided permission for the Tenant to pay half of the rent for August 2018. Instead, as I have found that the Landlord was not in compliance with Section 38(1) of the *Act* regarding the security deposit, I find that Section 38(6) applies as follows:

(6) 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.

Therefore, I find that the Tenant has established that she is entitled to the return of double the security deposit in the amount of \$2,400.00. As the Tenant was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00 for a total monetary award of \$2,500.00.

Conclusion

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$2,500.00** for the return of double the security deposit and the recovery of the filing fee paid for the Application for Dispute Resolution. 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: June 25, 2019

Residential Tenancy Branch