



Dispute Resolution Services

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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 1:45 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 testified that on April 12, 2019, she sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail to the landlord's address for service. A registered mail tracking number was provided during the hearing in support of service (RN383057304CA).

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the 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?

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

Background and Evidence

The tenancy began on September 1, 2018 and ended on February 28, 2019. The tenant paid a security deposit of \$800.00 at the start of the tenancy. The landlord returned \$400.00 to the tenant's daughter who was also a co-tenant. The landlord continues to hold the balance of \$400.00.

The tenant is claiming the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant provided a copy of the move-out inspection dated February 23, 2019 by which a forwarding address was provided to the landlord.

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 tenant's security deposit was not refunded in full 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.

I allow the tenant's claim for return of the balance of the security deposit and award an amount of \$400.00. Although the tenant may have been entitled to double the amount, the tenant did not apply for double the amount and also waived this right during the hearing.

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 \$500.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$500.00. 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: July 12, 2019

Residential Tenancy Branch