



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Upper College Heights
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with a tenant's application made under the *Residential Tenancy Act* ("the Act") for return of a security deposit. The tenant appeared at the hearing; however, there was no appearance on part of the landlord.

The tenant testified that she sent the hearing package to the landlord via registered mail shortly after filing and the registered mail was successfully delivered. I ordered the tenant to provide me with a copy of the registered mail receipt after the teleconference call ended. The tenant uploaded the registered mail receipt, including tracking number, as proof the tenant sent the landlord registered mail on February 24, 2019. I was satisfied the tenant duly served the landlord and I continue to consider the tenant's claim against the landlord.

Preliminary Issue – Jurisdiction

I explored whether the subject living accommodation was exempt from the Act under section 4(b). Section 4(b) provides that the Act does not apply to:

(b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,

The tenant submitted that she paid a security deposit on March 1, 2017 for a tenancy set to commence on August 1, 2017. The tenant testified that she rented a two bedroom apartment along with another tenant under two separate tenancy agreements. When her tenancy formed the residential property was privately owned and that some tenants were students of the nearby university but other tenants in the complex were not. The tenancy commenced on August 1, 2017 and the tenant became a student of the university. The tenant testified that in June 2018, shortly before the tenancy ended,

the tenant received a notice that the university had purchased the property but that the new owner would honour existing tenancy agreements. I ordered the tenant to produce a copy of that notice after the teleconference call ended, which she did.

The tenant provided a copy of a letter dated June 22, 2018 on the letterhead of the university. The letter provides that as of that date the university purchased the property with a view to providing student housing for students of the nearby university. The letter goes on to state that “there would be no immediate plans that affect your tenancy” and “nothing is changing today”.

The tenant testified that she moved out of the living accommodation on August 1, 2018 and a move-out inspection was performed by the landlord’s agent.

I am satisfied that when the tenancy formed the living accommodation was not owned by an educational institution and that provided the living accommodation to its students; rather, the residential property was privately owned and rented to individuals that were not necessarily students of the near university. As such, I find the Act applied to the subject living accommodation when the tenancy formed. Based on the evidence before me, namely the letter of June 22, 2018, I am satisfied that despite the change in ownership on June 22, 2018 both the tenant and the landlord had an expectation that existing tenancy agreements would continue to fall under the Act even if the tenant was a student at the university. Therefore, I proceed on the basis the Act applies to this tenancy agreement.

I note that the tenant named the landlord using the name appearing on the security deposit receipt which appears to be an operating name. The letter of June 22, 2018 does not indicate the operating name of the landlord is changing. Therefore, based on the limited information before me, I accept that the landlord has been properly named on the application.

I informed the tenant during the hearing that under the Act the landlord may be required to pay the tenant double the security deposit in certain circumstances unless the tenant waived entitlement to doubling. The tenant expressly stated she would not waive entitlement to doubling, especially considering how much time and effort she has put into trying to get her security deposit returned with no response from the landlord.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit and should the security deposit be doubled?

Background and Evidence

On March 1, 2017 the tenant paid a security deposit of \$247.50 for a tenancy set to commence on August 1, 2017. The monthly rent was \$495.00. The tenant and another individual rented the two bedroom apartment under two separate tenancy agreements (ie: tenancies in common). The tenant stated that there was a written tenancy agreement but that the landlord did not provide her with a copy of it.

The tenant submitted that she vacated the rental unit on August 1, 2018. The landlord's agent performed a move-out inspection and the living accommodation was found to be in satisfactory condition. The tenant testified that she delivered her forwarding address written on a piece of paper to the landlord at the landlord's office that is located in the complex where the residential property is located. The tenant claims she was told she would get her security deposit back; however, no refund has been received.

The tenant attended the landlord's office and sent emails to the landlord to follow up on the status of the refund to no avail.

The tenant finally made this application for return of the security deposit in February 2019.

Provided for my consideration was a copy of the security deposit receipt; a debit slip showing payment of the security deposit; the letter of June 22, 2018 described earlier in this decision; an email the tenant sent to the landlord on November 15, 2018 requesting return of her security deposit again; and, the registered mail receipt for mailing the hearing package.

Analysis

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides

that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

Based on the unopposed evidence before me, I accept that the tenant paid a security deposit of \$247.50; the tenancy ended August 1, 2018; and, the tenant provided the landlord with a forwarding address in writing in early August 2018. I further accept that the landlord has not refunded the security deposit to the tenant; made a claim against it and several months have since passed. Therefore, I find the tenant is entitled to return of double the security deposit, or \$495.00, under section 38(6) of the Act.

In keeping with my findings above, the tenant is provided a Monetary Order in the amount of \$495.00 to serve and enforce upon the landlord.

Conclusion

The tenant has been provided a Monetary order in the amount of \$495.00 to serve and enforce upon the landlord.

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 12, 2019

Residential Tenancy Branch