



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On May 13, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenant appeared at the hearing; however, the Landlord did not. The Tenant provided affirmed testimony that she served the Landlord with the Notice of Dispute Resolution Proceeding using Canada Post Registered Mail sent on May 16, 2019. The Tenant testified that she sent the Notice addressed to the Landlord's address. The Tenant provided the Registered Mail receipt number as proof of service. The Tenant provided a copy of the mailing label as proof of where it was sent. The Tenant testified that the mail was delivered. I find that that the Notice of Hearing was served to the Landlord in accordance with sections 89 and 90 of the Act and the Notice of Hearing is deemed to have been received by the Landlord on the fifth day after it was mailed.

The hearing process was explained and the Tenant was asked if she had any questions. The Tenant provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to the return of double the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy began on July 15, 2015, and ended on March 30, 2019. Rent in the amount of \$850.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$425.00.

The Tenant testified that the original Landlord sold the rental property to a new Landlord sometime in 2016.

The Tenant testified that she provided the Landlord with her forwarding address on April 12, 2019. The Tenant provided a copy of the letter sent to the Landlord containing her forwarding address. The Tenant testified that the Landlord received the forwarding address and mentioned to her that she was keeping the deposit.

The Tenant testified that the Landlord did not return the security deposit after the Tenant moved out of the rental unit and that there was no agreement that the Landlord could retain any amount of the security deposit.

Analysis

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if a Landlord does not comply with subsection (1), the Landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the tenancy ended on March 30, 2019, and the Tenant provided her forwarding address to the Landlord on April 12, 2019. There is no evidence before me that the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find that there was no agreement from the Tenant that the Landlord could retain the security deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

I order the Landlord to pay the Tenant the amount of \$850.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$950.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to return the security deposit to the Tenant in accordance with the legislation.

The Tenant is granted double the amount of the security deposit and the cost of the filing fee. I grant the Tenant a monetary order in the amount of \$950.00.

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: August 20, 2019

Residential Tenancy Branch