



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$754 including an order for the return of the security deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on August 28, 2019.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order including an order for the doubling of the security deposit and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on December 1, 2018 and end on December 31, 2019. The rent was \$1200 per month payable in advance on first day of each month. The tenant's agent stated that the tenant paid a security deposit of \$600. The landlord testified that the tenant did

not pay a security deposit. The tenancy agreement produced by the landlord indicates that no security deposit was paid.

The tenancy ended on July 27, 2019. The agent for the tenant testified the tenant was locked out and the tenant was not able to retrieve his copy of the tenancy agreement. The tenant disputes the authenticity of the tenancy agreement relied on by the landlord. The tenant(s) provided the landlord with his/her their forwarding address in writing on July 29, 2019.

The landlord testified she re-rented the rental unit with a new tenant taking possession in early August. That tenant has since vacated the rental unit. She is waiting for a friend to arrive from out of country so that the rental unit can be rented to her.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

Unfortunately the evidence provided by both parties was not satisfactory. The landlord failed to provide banking records, books of account and receipts. The landlord testified she had text messages confirming rent payments but no the payment of a security deposit. Those text messages were not produced at the hearing. The tenant failed to attend the hearing. He works out of town for periods of 2 to 3 weeks at a time and was not available. He also failed to provide banking records. Presumably there are text messages and other communications between the parties which is relevant to a determination as to whether a security deposit was paid.

The parties were not interested in attempting to reach a compromised settlement.

In the circumstances I determined it was appropriate to dismiss the tenant's claim with leave to re-apply. Should the tenant re-apply both parties are encouraged to obtain

legal advice and to provide proper evidence so that a decision can be made on the merits.

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: December 10, 2019

Residential Tenancy Branch