



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC 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, including double the amount;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and respective evidence submissions.

The landlord's name was misspelled in the application and has been amended to reflect the correct spelling.

The tenant withdrew her claim for reimbursement of cost of emergency repairs and other monetary loss.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

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

Background and Evidence

The tenancy began on April 1, 2018 and ended on February 28, 2019. The tenant paid a security deposit of \$750.00 at the start of the tenancy which the landlord continues to hold.

The tenant is claiming double the security deposit arguing that 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 an e-mail dated March 13, 2019 as proof of service of a forwarding address.

The landlord acknowledged receipt of a forwarding address but argues that he mailed a cheque to the forwarding address provided by the tenant in the last week of March 2019. The landlord submits that the tenant subsequently provided an alternate forwarding address. The landlord testified that he later put a stop payment on the cheque when he learned the tenant had not received it. The landlord submits that he made additional attempts to return the security deposit after receiving the tenant's application.

The tenant disputes that the landlord sent a cheque at the end of March 2019. The tenant testified that she resided at the first forwarding address provided from March 1, 2019 until the end of May 2019. The tenant testified that no cheque was received. The tenant also referred to a text message she received from the landlord at the end of the tenancy in which the landlord states he will not be returning the security deposit.

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.

It was not disputed that the landlord received the tenant's forwarding address on March 13, 2019. It was also not disputed that the tenant did not receive or deposit the cheque that was allegedly sent by the landlord at the end of March 2019. The onus is on the

landlord to prove that he did attempt to return the security deposit to the address provided by the tenant. The landlord did not submit any supporting documents in support of mailing out a cheque or putting any stop payment on the cheque. I find the landlord has provided insufficient evidence that he returned the security deposit within 15 days of receipt of a forwarding address. Further, the text message evidence submitted by the tenant suggests that the landlord had no intention to return the deposit.

The tenants' security deposit was not refunded 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; therefore, the doubling provisions of section 38 apply.

I allow the tenant's claim for return of the security deposit and award an amount of \$1500.00, which is double the original security deposit of \$750.00.

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 \$1600.00.

Conclusion

Pursuant to section 67 of the Act, I grant the tenant a Monetary Order in the amount of \$1600.00. 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: January 28, 2020

Residential Tenancy Branch