



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 21, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit

The Tenant attended the hearing. However, the Landlord did not. The Tenant stated that she sent the Notice of Hearing and her application package to the Landlord by registered mail on March 18, 2020. The Tenant provided proof of mailing to support she sent this to the address the Landlord listed on the tenancy agreement as his address for service. Pursuant to section 90 of the Act, I find the Landlord received this package 5 days after it was mailed, on March 23, 2020.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The Tenant stated that the tenancy ended on January 31, 2020, which was the day she vacated the rental unit and did the move-out inspection. On this same day, the Tenant returned the key and personally delivered her forwarding address in writing to the Landlord at the address he requested (front door of unit). Subsequent to this, the Tenant received a cheque in the amount of \$225.00 at her forwarding address, along with a note from the Landlord stating he was keeping some of the deposit. The Tenant stated she never agreed to any deductions.

The Tenant provide a copy of cheques, showing she paid the deposit, as well as a copy of the correspondence she had with the Landlord over the deposit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the Tenant hand delivered the forwarding address in writing to the Landlord on January 31, 2020. Pursuant to section 88 and 90, I find the Landlord is deemed to have received this package 3 days after it was left, February 3, 2020. The Landlord had 15 days to return the deposit, in full, or file an application against the deposit. However, he did neither, and only returned a portion of the deposit. I note he did not have written consent from the Tenant for the deductions.

Therefore, the Landlord had until February 18, 2020, to either repay the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord returned \$225.00, and kept the remaining \$175.00. Accordingly, I find the Tenant is entitled to recover double the amount of the security deposit initially held by the Landlord ($2 \times \$400.00 = \800.00) less the amount already returned (\$225.00) pursuant to section 38(6) of the *Act*.

Pursuant to section 72 of the Act, and given the Tenant was successful in her application, I award her recovery of the filing fee she paid for this application. Accordingly, pursuant to section 38 and 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$675.00, which is due to the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*, and \$100.00 in recovery of the filing fee.

Conclusion

I grant the Tenant a monetary order in the amount of \$675.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: April 21, 2020

Residential Tenancy Branch