



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This participatory hearing was scheduled pursuant to an Interim Decision issued by an Adjudicator on September 10, 2020 in response to the tenant's Application for Dispute Resolution by Direct Request for return of the security deposit.

Only the tenant and her husband appeared for the participatory hearing. Since the landlord did not appear, I explored service of the Notice of Dispute Resolution Proceeding and the Interim Decision upon the landlord, as ordered by the Adjudicator.

The tenant testified that the Notice of Dispute Resolution Proceeding and Interim Decision were sent to the landlord via registered mail on September 15, 2020. The tenant testified that she sent the documents to the landlord at two different addresses: the landlord's service address that appears on the tenancy agreement and on the envelope containing the partial refund cheque received from the landlord; and, to the rental unit address as the landlord had ended the tenancy for landlord's use of property indicating the landlord would be occupying the rental unit after the tenancy ended. The tenant testified that the registered mail envelopes were successfully delivered and not returned to her. The tenant provided copies of the registered mail envelopes, including tracking numbers, and registered mail receipts, as proof of service. I was satisfied the tenant served the landlord with notification of this hearing as required under the Act and as ordered I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

1. Is the tenant entitled to return of the security deposit and should the security deposit be doubled?
2. Award of the filing fee.

Background and Evidence

The tenancy started on September 1, 2019 and the tenant paid a security deposit of \$1050.00. The tenant was required to pay rent of \$2100.00 on the fifth day of every month. The tenant provided a copy of the tenancy agreement as evidence.

The tenant testified that the parties did a move-in inspection together; however, the landlord did not prepare a move-in inspection report.

The tenant testified that in late June 2020 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property and the landlord informed the tenant she was ending the tenancy so that the landlord could be occupying the rental unit. The tenant submitted the tenancy was set to end July 31, 2020 although the tenant moved out earlier, on July 25, 2020. The landlord invited the tenant to participate in a move out inspection on August 1, 2020 and the tenant attended the inspection; however, the landlord did not prepare a move-out inspection report with the tenant.

On August 4, 2020 the tenant sent her forwarding address to the landlord via registered mail using the landlord's service address that was on the tenancy agreement. The tenant provided a copy of the document she sent to the landlord and the registered mail receipt to prove her forwarding address was given to the landlord.

On August 17, 2020 the landlord mailed a cheque to the in the amount of \$42.00 along with a list of deductions the landlord made from the security deposit and some receipts. This was sent to the tenant by the landlord, via registered mail, at her forwarding address. The tenant provided a copy of the partial refund cheque, the landlord's list of deductions and receipts provided by the landlord, and the registered mail envelope they came in as evidence. The tenant testified that she did not cash the partial refund cheque.

The tenant testified that she did not give the landlord any written authorization to make deductions from her security deposit.

The tenant stated the landlord did not serve her with a Landlord's Application for Dispute Resolution to make a claim against her security deposit.

The tenant stated she does not waive any entitlement to doubling of the security deposit if she is so entitled.

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.

In this case, I accept the unopposed evidence before me that the tenant vacated the rental unit and brought the tenancy in late July 2020. I also accept the unopposed evidence before me that the tenant sent her forwarding address to the landlord via registered mail on August 4, 2020. A search of the registered mail tracking number showed the registered mail sent on August 4, 2020 was delivered by Canada Post on August 10, 2020. Therefore, I find the landlord was in receipt of the tenant's forwarding address on August 10, 2020 and the landlord had 15 days, or until August 25, 2020, to comply with section 38(1) by either: refunding the security deposit to the tenant; getting the tenant's written consent to make deductions from the security deposit; or, file a Landlord's Application for Dispute Resolution to make a claim against the tenant's security deposit.

The landlord sent a partial refund of \$42.00 to the tenant on August 17, 2020; however, the landlord made deductions totalling \$1008.00 from the security deposit without the written consent of the tenant. Nor did the landlord file a Landlord's Application for Dispute Resolution to seek authorization of an Arbitrator to make deductions from the security deposit. Therefore, I find the landlord violated section 38(1) of the Act and must now pay the tenant double the security deposit, or \$2100.00.

Since the tenant did not cash the landlord's partial refund cheque, I make no deduction from the above award for the amount of the partial refund cheque.

Given the tenant was successful in this Application for Dispute Resolution, I award the tenant recovery of the \$100.00 filing fee paid by the tenant for this Application for Dispute Resolution.

In keeping with all of the above, I provide the tenant with a Monetary Order in the sum of \$2200.00 to serve and enforce upon the landlord.

Conclusion

The tenant is provided a Monetary Order in the sum of \$2200.00 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: December 18, 2020

Residential Tenancy Branch