



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

On March 12, 2021, the Tenant applied for a Direct Request proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On April 9, 2021, this Application was set down for a Dispute Resolution participatory hearing to be heard on September 2, 2021 at 1:30 PM.

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 33-minute teleconference. At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term. As well, she provided a solemn affirmation.

She advised that the Notice of Hearing and evidence package was served to the Landlord, to the Landlord’s address provided on the tenancy agreement, on April 9, 2021 by registered mail (the registered mail tracking number is noted on the first page of this Decision). She submitted that the Landlord refused this package, and it was returned to sender. Based on this undisputed evidence, I am satisfied that the Landlord was deemed to have received the Notice of Hearing and evidence package five days after it was mailed. As a result, I have accepted the Tenant’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?

- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that she signed a tenancy agreement, as co-tenants with another tenant, that started on April 1, 2018. This tenancy was signed by an agent of the Landlord, who was apparently the Landlord's spouse. This person never informed her that he was not the owner of the rental unit. Rent was established at an amount of \$2,700.00 per month and was due on the first day of each month. Contrary to Section 19 of the *Act*, the agent for the Landlord collected \$1,350.00 from each co-tenant for this tenancy, which was an overpayment of the security deposit and was illegal to request. This particular tenancy ended on March 31, 2019. A copy of this tenancy agreement was submitted as documentary evidence.

She advised that her co-tenant above left after March 31, 2019 and that person's \$1,350.00 portion of the security deposit was returned to that co-tenant. However, the Tenant advised that she signed another tenancy agreement, as co-tenants with a different tenant, that started on April 1, 2019. This second tenancy agreement was signed by the same agent of the Landlord. Rent was established at an amount of \$2,767.50 per month and was due on the first day of each month. She stated that her \$1,350.00 security deposit from the original tenancy was transferred to this new agreement and that her new co-tenant was forced to pay \$1,383.75 as an additional security deposit. Contrary to Section 19 of the *Act*, the agent for the Landlord again collected a total amount of a security deposit that exceeded the maximum amount allowable to be collected. This second tenancy ended on November 30, 2020. A copy of this second tenancy agreement was submitted as documentary evidence.

She advised that she had always been in contact with the agent for the Landlord. However, on October 20, 2020, she received an email from this person advising her that he was not the owner of the rental unit and he provided the identity of the owner. That person was his wife and he stated that she would be the person that would be responsible for all matters related to the tenancy. He also provided contact information for his wife. The Tenant stated that the Landlord then responded, on October 20, 2020, to the agent's aforementioned email and informed the Tenant that she would look into the Tenant's concerns. The Tenant submitted this email chain as documentary evidence.

The Tenant then advised that she emailed the Landlord on October 28, 2020 to advise her that they would be ending their tenancy, and this was submitted as documentary

evidence as well. A portion of the Landlord's response to this email was included in this documentary evidence, and the Tenant read the remainder of the Landlord's response, which confirmed the Landlord's acceptance of the Tenant's intention to end the tenancy.

The Tenant advised that she believes the Landlord returned half of the \$1,383.75 collected from the co-tenant, to the co-tenant, prior to December 15, 2020. She testified that this co-tenant did not give any written consent for the Landlord to keep any portion of the total security deposit of \$2,733.75 that was collected illegally from the co-tenants by the Landlord.

She stated that she texted the Landlord on December 15, 2020 and advised the Landlord that she would be providing her forwarding address in writing to the Landlord's address listed on the tenancy agreement. She also informed the Landlord of her responsibilities to deal with the security deposit in accordance with the *Act* after her forwarding address in writing has been provided. She stated that the Landlord acknowledged this text and argued that there were damages to the rental unit. The Tenant read the contents of the text messages between the parties on this date.

She advised that she sent her forwarding address in writing to the Landlord, to the Landlord's address listed on the tenancy agreement, by registered mail on December 15, 2020 (the registered mail tracking number is also noted on the first page of this Decision). She submitted that the Landlord refused this package, and it was returned to sender. In addition, she stated that the Landlord has neither returned her portion of the security deposit nor made an Application to keep it.

As the Landlord has not complied and dealt with the security deposit in accordance with the *Act*, she is requesting double the amount that she contributed to the security deposit of $\$1,350.00 \times 2 = \mathbf{\$2,700.00}$, instead of requesting double the amount of the total, illegal security deposit that was collected from the co-tenants, minus what was already returned to the one co-tenant.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to whether or not the Landlord should be named as the Respondent in this matter, based on the undisputed testimony from the Tenant, the documentary evidence of correspondence from the agent, and the responses from the Landlord to the Tenant's messages, I am satisfied that the Respondent noted on the first page of this Decision has confirmed that she was in fact the owner/Landlord of the rental unit and was responsible for dealing with the security deposit in accordance with the *Act*.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

When reviewing the evidence before me, it is clear that there were co-tenants in this tenancy, and that the Landlord collected an incorrect amount of a security deposit from them. Moreover, the undisputed evidence is that the Tenant provided her forwarding address in writing to the Landlord on December 15, 2020 and I am satisfied that this package was deemed to have been received five days after it was mailed. As such, I am satisfied that the Landlord had received this address on December 20, 2020.

I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address being provided or from when the tenancy ends, the Landlord must either return the deposit in full **or** make an Application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without the co-tenants' written consent. However, it appears as if she did so by retaining a portion of the co-tenant's security deposit without anyone's written consent prior to December 15, 2020.

As the Landlord had received the Tenant's forwarding address in writing, she had 15 days from December 20, 2020 to either return the remaining balance of the deposit in full or make an Application through the Residential Tenancy Branch to keep the balance of the deposit. However, the Landlord took no action.

Based on the totality of the evidence before me, as the co-tenants did not provide written authorization for the Landlord to keep any amount of the illegally obtained security deposit, and as the Landlord did not return the balance of the security deposit in full or make an Application to keep this amount within 15 days of December 20, 2020, I find that the Landlord did not comply with the requirements of Section 38 and illegally withheld the security deposit contrary to the *Act*. Therefore, the doubling provisions of this Section do apply in this instance.

Consequently, and based solely on the Tenant's request, I am satisfied that the Tenant has substantiated a monetary award amounting to double the amount of the security deposit that she paid. Under these provisions, I grant the Tenant a monetary award in the amount of **\$2,700.00**.

As the Tenant was successful in this claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Doubling of the security deposit	\$2,700.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,800.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$2,800.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. 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: September 2, 2021

Residential Tenancy Branch