



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for the return of the security deposit and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on May 24, 2012. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to recover the security deposit?

Background and Evidence

The tenant testifies that this month to month tenancy started on September 01, 2011 and ended on April 02, 2012. Rent for this unit was \$1,100.00 per month due on the first

day of each month in advance. The tenant paid a security deposit of \$550.00 on September 01, 2012.

The tenant testifies that she gave the landlord her forwarding address in writing and has provided a copy of this letter which is dated May 09, 2012. The tenant provided a Canada Post tracking number for this letter which was sent to the landlord on May 09, 2012 and therefore deemed to have been served five days after it was posted.

The tenant testifies that the landlord did not do either a move in or a move out inspection of the property and the tenant left the rental unit clean at the end of the tenancy. The tenant testifies that she did not give the landlord permission to keep all or part of the security deposit. The tenant testifies that the landlord has failed to return her security deposit and the tenant now seeks to recover double the deposit.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on May 14, 2012. As a result, the landlord had until May 29, 2011 to return the tenants security deposit. I find the landlord did not return the security deposit and the landlord has extinguished their right to file a claim against the deposit as the landlord failed to complete either a move in or move out condition inspection of the property with the tenant in accordance with s. 24(2) and

36(2) of the *Act*. Therefore, I find that the tenant has established a claim for the return of double the security deposit pursuant to section 38(6)(b) of the *Act*.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order for the sum of **\$1,150.00**

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,150.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: July 24, 2012.

Residential Tenancy Branch