



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be Decided

Did the tenant pay a security deposit? Is the tenant entitled to the return of double the security deposit?

Background and Evidence

The tenancy started on October 01, 2003 and ended on August 31, 2012. The monthly rent at the start of tenancy was \$645.00. The tenant was employed by the landlord as a resident caretaker for the entire term of the tenancy. The owner was represented by two agents (referred to as 'landlord' in this decision).

The tenant stated that prior to moving in; he paid a security deposit of \$322.50 in cash to the owner of the rental unit, who was unable to attend the hearing. The landlord disputed this and argued that a security deposit was not paid by the tenant.

At the move out inspection, the tenant gave the landlord his forwarding address and requested the return of the security deposit. The landlord asked for proof of payment. The tenant replied that he had a receipt in his storage boxes but later contacted the landlord to inform her that he could not find one and maybe one was never issued. The landlord stated that she would return the deposit only if the tenant could provide proof of payment.

The tenant stated that in his role of caretaker he followed the practice of allowing prospective tenants to move in only after they paid a security deposit. The landlord confirmed this practice. The landlord added that her mother, the owner/operator at the time of the start of the tenancy gave the tenant a break by not charging him a security deposit and allowed him to move in without paying one.

The landlord filed bank statements from October 2003 that show a lump sum was deposited into the account each month, which consisted of rent and income from the laundry machines. The statements showed security deposits as separate amounts deposited into the account. However, the statements do not show any details regarding the source of the income and therefore do not provide information on payments made specifically by the tenant for the unit that he occupied.

The tenant stated he was not given a copy of the tenancy agreement or the move out inspection report. The landlord stated that neither document existed. She stated that even though she conducted an inspection with the tenant a report was not created.

The tenant is claiming the return of double the security deposit. An attempt at mediation was made, but the landlord maintained that no payment would be made to the tenant because the tenant had not proven that he had paid a security deposit.

Analysis

Based on the sworn testimony of both parties, I must determine whether or not the tenant paid a security deposit. In the absence of a receipt for the payment, I will decide on a balance of probabilities whether it is more likely than not that the tenant paid a security deposit.

Upon review of the documents filed into evidence and based on the testimony of both parties I make the following findings:

1. The owner, who the tenant states accepted the security deposit in cash, was unavailable to testify.
2. The landlord's practice is not to allow a tenant to move in without payment of a security deposit.
3. If the tenant did not pay a security deposit then he was allowed to move in against this practice and allowed to continue to rent for almost nine years without having paid one.
4. The landlord did not have a copy of the tenancy agreement.
5. The landlord did not create a move out inspection report or if she did so, then she did not provide the tenant with a copy.

Based on the above and the landlord's testimony about their policy regarding the payment of a security deposit, I find that on a balance of probabilities, it is more likely than not that the tenant would not have been allowed to secure the rental unit on September 08, 2003 for a move in date of October 01, 2003 without paying a security deposit.

In addition, the documents pertaining to the tenancy were either not in existence, not created or were lost. Therefore it is possible that the tenant paid a security deposit and was not issued a receipt or that the receipt was missing. Based on the above findings and after hearing the lengthy testimony of both parties, I find that I prefer the tenant's testimony. I further find that on a balance of probabilities, it is more likely than not that the tenant would not have been allowed to move in without having paid a security deposit and the absence of proof of payment is in keeping with the absence of other documents related to the tenancy.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. Based on the sworn testimony of both parties, I find that the landlord was notified of the tenant's forwarding address at the move out inspection on August 31, 2012. I further find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address. Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$322.50.00 and is obligated under section 38 to return double this amount along with the accrued interest of \$11.42 for a total of \$656.42.

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for \$656.42, which represents double the base security deposit and the accrued interest. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for **\$656.42**.

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: March 27, 2013