



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing convened as a result of cross applications. In the Landlords' Application for Dispute Resolution she sought authorization to keep all or part of the security deposit, a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the filing fee. The Tenant sought return of double the security deposit and to recover the filing fee.

Both parties appeared at the hearing. The Tenant was represented by his father, who was also acting as his counsel. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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.

At the outset of the hearing, the Landlord stated that she provided her evidence in support of her claim for a Monetary Order for Damages to T.W. on October 30, 2014 to the Tenant's father, T.W. T.W. stated that he did not receive any such evidence either at his home or business address. I accept that the materials were not received by T.W. and accordingly I dismiss with leave to reapply, the Landlord's claim for compensation for damages pursuant to section 67.

Issues to be Decided

1. Is the Landlord entitled to retain the security deposit paid by the Tenant?

2. Is the Tenant entitled to return of double his security deposit from the Landlord?
3. Should either party recover the fee paid to file their application?

Background and Evidence

T.W. submitted that the tenancy began September 1, 2013. The Tenant, J.W., was one of six students who rented a home from the Landlord for the monthly amount of \$3,600.00. T.W. stated that each of the six tenants paid a security deposit of \$514.28. The Landlord agreed that T.W. paid this sum.

All of the tenants moved out of the rental unit on April 30, 2014. T.W. stated that J.W. gave his forwarding address to the landlord on August 7, 2014. Conversely, the Landlord confirmed that it was not until September 29, 2014 that she was provided with written notification of J.W.'s forwarding address.

In any case, the Landlord made her application for dispute resolution on October 30, 2014.

The Landlord submitted in evidence an email she sent to the Tenants indicating she would not be returning their security deposit.

T.W. confirmed J.W. did not sign over any portion of the security deposit.

Analysis

After careful consideration of the relevant evidence before me, and on the balance of probabilities, I find as follows.

Although the parties disagree as to the date the Tenant provided his forwarding address, even if I accept the Landlord's evidence on this point, it is clear that the Landlord failed to make her application for dispute resolution within 15 days of being provided the Tenant's forwarding address.

In failing to return the security deposit or make an application, the Landlord is in breach of section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are

entitled to it or are justified to keep it. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue. Therefore, I Order, pursuant to section 38(6)(b) that the Landlord repay double the security deposit, namely \$1,028.56.

The Tenant, having been substantially successful, is entitled to recovery of the fee paid to file his application. In total, I grant the Tenant a Monetary Order in the amount of **\$1,078.56**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Landlord's claim for monetary compensation from the Tenant is dismissed with leave to reapply.

The Landlords failed to make an application for dispute resolution within 15 days of receiving the Tenant's forwarding address in writing and as such must pay the Tenant double the security deposit pursuant to section 38(6)(b). The Tenant is entitled to recovery of the filing fee.

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: May 13, 2015

Residential Tenancy Branch

