



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for return of double the security deposit paid to the landlord and for the return of the filing fee for the Application, under the Residential Tenancy Act (the "Act"). Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord submitted a copy of the tenancy agreement and was the only documentation submitted by either party for this hearing. Both parties gave affirmed testimony.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the tenant entitled to the return of double the security deposit?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on September 1, 2015 and was to be for a one year fixed term scheduled to end on August 31, 2016. The tenant stated that he notified the landlord on February 1, 2016 that the rent was becoming too difficult to pay and wanted to end the tenancy. The tenant stated that the landlord advised him on February 10, 2016 that she had rented the suite for March 1, 2016. The tenant stated that he made arrangements to move out on that day to assist the landlord. The monthly rent is \$1300.00 due on first of each month. At the outset of the tenancy the tenant posted a security deposit of \$700.00.

The tenant stated that he was never informed by the landlord that the party backed out of the deal and that she wasn't able to re-rent until March 15, 2016. The tenant stated that he would have stayed the two extra weeks as he was sick with pneumonia and would have worked out for both parties. The tenant stated that he provided his forwarding address to the landlord by text message and by leaving a letter during the first week of March. The tenant stated that a written condition inspection report was conducted at move in but not at move out. The tenant stated that he would have tried to resolve the matter but since he had to wait five months for his deposit so he is seeking the return of double the deposit plus his filing fee.

The landlords' testimony is as follows. The landlord stated that the tenant broke the lease and shorted her \$100.00 for the month of February. The landlord stated that the

tenant gave his forwarding address in writing sometime in the first week of March but because she has suffered a rental loss for the first two weeks of the month she did not return it. The landlord stated that she also incurred costs to paint and clean the suite to make it suitable for rental.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below. It was explained in great detail to both parties that this decision will only address the application before me. It was further explained that if either party had any other issues that they wished to have resolved in regards to this tenancy, they were at liberty to file a separate application. Both parties stated that they understood.

The landlord advised that she did not have the written consent of the tenant to retain the deposit, or an order from the Branch to allow her to retain it. The landlord also advised that she has not filed an application seeking to retain the deposit, but felt she was justified in keeping it based on the tenant "breaking the lease". The tenant stated that he acted on the information given to him by the landlord and made arrangements to move out as requested and felt he was released from his obligation. The tenant stated that had the landlord told him the tenancy fell through he would have gladly stayed until March 15, 2016 to avoid any loss of revenue to the landlord and to meet his legal requirements.

Section 38 of the Act addresses the issue before me as follows.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the landlords own testimony, I find that they are in breach of Section 38 of the Act and that the tenant is entitled to the return of double the security deposit.

The tenant is also entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The tenant has established a claim for \$1500.00. I grant the tenant an order under section 67 for the balance due of \$1500.00. This order may be filed in the Small Claims 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: August 08, 2016

Residential Tenancy Branch