



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: *MNSD, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order for the return of the security deposit and an order to recover the filing fee for the cost of this application.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit and her filing fee?

Background and Evidence

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

The tenancy started on July 01, 2005 and the tenant paid a security deposit of \$300.00 on that day. The tenancy ended on September 29, 2008. The tenant stated that she did not provide the landlord with a forwarding address. The landlord and tenant did not agree on the deficiencies that were indicated on the move out condition report. The tenant filed an application for dispute resolution on October 25, 2008.

The landlord has submitted into evidence, photographs and a move out inspection report to corroborate his claim against the security deposit. However, since this is the tenant's application for the return of the security deposit, the landlord must file his own application if he wants to make a claim for damages.

Analysis

Section 38 (1) of the *Residential Tenancy Act* states that within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with

interest. Section 38 (4) (a) states that the landlord may retain an amount from the security deposit if the tenant agrees in writing that the landlord may retain the amount to pay an obligation of the tenant.

In this case, I find that the tenant did not agree to any deductions off her security deposit for damages or cleaning. She also did not provide the landlord with a forwarding address in writing. The landlord did not return the security deposit nor did he apply to make a claim against it as he did not have her forwarding address. However, he was advised of her forwarding address when he received the notice of hearing and has not made application to claim against it.

I find that the tenant applied for the return of her security deposit prior to providing her forwarding address to the landlord and since the landlord did not apply to retain all or part of it, I find that she is entitled to the return of her security deposit. Accordingly, pursuant to Section 38 of the *Residential Tenancy Act*, I grant the tenant a monetary order in the amount of the security deposit plus the accrued interest. This order may be filed in the Small Claims Court and enforced as an order of that Court. The tenant is also entitled to the filing fee for this application.

Conclusion

I find that the tenant has established her claim for the return of the security deposit with interest and the filing fee and I grant the tenant an order under Section 67 of the *Residential Tenancy Act*, in the amount of **\$360.29**.

Dated December 04, 2008.

Dispute Resolution Officer