



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

MNDC, MNSD, FF.

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order pursuant to Section 67 for compensation in the amount of one months rent due to the landlord's notice to end tenancy, for landlord's use.
- An monetary order for the return of double the security deposit plus interest, pursuant to Section 38;
- An order to recover the cost of filing the Application for Arbitration pursuant to Section 72.

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.

During the hearing the tenant recalled that the tenant did not pay rent for the last month of the tenancy and hence withdrew the tenant's claim for compensation in the amount of one months rent.

Issues to be decided

Is the tenant entitled to a monetary order to recover the filing fee and double the security deposit plus interest?

Background and Evidence

Based on the sworn testimony of both parties, the facts are as follows:

The tenancy started on February 15, 2007 and ended on September 15, 2008. The monthly rent was 1100.00 due in advance on the 15th day of each month. At the start of the tenancy, the tenant paid a security deposit in the amount of \$550.00.

On July 10, 2008, the landlord served the tenant with a two month notice to end tenancy for landlord use of property. The effective date of the notice was September 15, 2008 and the tenant moved out on that date. Prior to moving out, the tenant provided the landlord with a forwarding address in writing. As per a decision rendered by a dispute resolution officer, on October 22, 2008, regarding the landlord's application to retain the security deposit, the landlord's application was dismissed. The landlord stated that from the wording of the decision, the landlord understood that the landlord was ordered to retain the security deposit and hence the landlord did not return the security deposit to the tenant.

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 or make an application to retain all or part of the security deposit. In this instance, the tenant provided the landlord with a forwarding address prior to moving out. The landlord applied to retain the security deposit and as per a decision rendered on October 22, 2008, the application was dismissed. As of this date the landlord has not returned the security deposit to the tenant and as per the above mentioned decision, I order the landlord to return the security deposit plus interest. The tenant is also entitled to the recovery of the filing fee. Since the landlord applied to retain the security deposit in a timely manner, pursuant to Section 38, the tenant is not entitled to double the security deposit. Accordingly, I find that the tenant is entitled to a total of \$615.58

Conclusion

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for the security deposit of \$550.00, accrued interest of \$15.58 plus the filing fee of \$50.00 for a total in the amount of **\$615.58**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 06, 2009.

Dispute Resolution Officer