



Dispute Resolution Services

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

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with the tenant's application for double return of her security deposit, and recovery of the filing fee for this application. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to either or both of the above

Background and Evidence

Pursuant to a written residential tenancy agreement, the 6 month term of tenancy was from October 1, 2008 to March 31, 2009. Rent in the amount of \$900.00 was payable on the first day of the month, and a security deposit of \$450.00 was collected on September 25, 2008.

By letter dated February 13, 2009, the tenant informed the landlord of her intent to vacate the unit effective February 28, 2009, or one month before the expiry of the term of tenancy. Subsequently, the tenant's brother rented the unit effective March 1, 2008.

The parties agree that sometime around the end of tenancy the tenant informed the landlord in writing of her forwarding address. Further, the tenant asserts that the landlord verbally assured her that her security deposit would be returned. Thereafter, however, the tenant states that the landlord's position changed and the security deposit was not returned. In this regard, the landlord's agent notes a provision in the tenancy agreement as follows:

....if the tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Tenancy Agreement at an end and in such event, the sum of \$450.00 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty. The payment by the Tenant of the said liquidated damages to the Landlord is agreed to be in addition to any other rights and remedies available to the landlord.

Analysis

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**. In particular, section 38(1) states:

38(1) 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.

Further, section 38(6) of the Act states:

38(6) 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 documentary evidence and testimony of the parties, I find that the landlord did not return the tenant's security deposit within 15 days either, of the end of tenancy, or the date when the tenant informed the landlord in writing of her forwarding address. Further, I find that neither did the landlord apply for dispute resolution in order to make a claim against the tenant's security deposit.

Accordingly, pursuant to all of the above I find that the tenant has established a claim of \$901.81. This is comprised of double the security deposit of \$900.00 (2 x \$450.00) in addition to interest calculated on the original amount of the security deposit of \$1.81. As this outcome favours the tenant, I also find the tenant is entitled to recovery of the \$50.00 filing fee. I therefore grant the tenant a monetary order under section 67 of the Act for \$951.81 (\$900.00 + \$1.81 + \$50.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of **\$951.81**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: June 23, 2009

Dispute Resolution Officer