

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit and the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issue to be Decided

Is the tenant entitled to the return of double the security deposit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenant entered into a fixed term tenancy on March 06, 2009. On that day the tenant paid a security deposit of \$850.00. The tenancy was for a fixed term of three months and would end on June 30, 2009. The rent was set at \$1,700.00 per month and the tenant gave the landlord three post dated rent cheques for each month of the term. The landlord agreed that she was aware of the fact that the tenant was looking to purchase a condo.

Subsequently, prior to the start of the tenancy, the tenant found a condo that she intended to purchase and advised the landlord in writing and on the phone that she would not be moving into the dispute suite. The landlord agreed that the tenant had given notice to end the tenancy on March 30, 2009 and that the tenant cooperated with the landlord in her search for a new tenant. A new tenant was found for May 01, 2009.

The tenant stated that she was told by the office of the landlord that she would be required to pay rent for April. The tenant stated that since it was too late to find a tenant for April, she agreed to pay rent for April.

On April 30, both parties conducted a move out inspection and the landlord agreed that

everything was in good order. At the end of the inspection the landlord advised the tenant that she would not be getting her security deposit back as she had broken the fixed term lease.

The landlord also agreed that the tenant gave her a forwarding address on or about April 30, 2009. The tenant has applied for double the security deposit and the filing fee. The landlord stated that the security deposit was retained to cover the cost of finding a new tenant. The landlord did not file any evidence to support her claim of having incurred costs to find a tenant.

Analysis

Even though the tenant breached the tenancy agreement by ending a fixed term tenancy prior to the end date, the landlord did not suffer any loss of income as a new renter was found for the balance of the term of the lease.

The tenancy agreement filed by the landlord did not contain a liquidated damages clause where the parties agreed in advance on the amount of the damages payable in the event of a breach of the tenancy agreement. In addition, the landlord did not file any evidence to support her claim of having incurred expenses due to a breach of the tenancy agreement on the part of the tenant.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$850.00 and is obligated under section 38 to return this amount. The amount that is doubled is the base amount of the deposit which is \$850.00.

Since the tenant has proven her case, she is also entitled to the recovery of the filing

fee of \$50.00.

Conclusion

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$1,750.00**, which represents double the security deposit plus the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated August 24, 2009.

Dispute Resolution Officer