



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 return of the security deposit and recovery of the filing fee for this application. The tenant participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the landlord did not appear.

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 period of tenancy was from January 21 to June 30, 2008. Rent in the amount of \$850.00 was payable on the first day of the month, and a security deposit of \$500.00 was collected on January 16, 2008.

Following the end of tenancy, there was e-mail interaction between the parties in regard to the landlord's return of the security deposit. In short, the landlord did not comply with the tenant's request to repay the security deposit by way of depositing it into the tenant's bank account. Following this, by letter dated September 22, 2008, the tenant again requested that the landlord return the security deposit and in the letter the tenant provided the forwarding address. Subsequently, however, the security deposit was never returned.

Analysis

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part, as follows:

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.

Based on the documentary evidence and undisputed testimony of the tenant, I find that the landlord was informed in writing of the tenant's forwarding address by letter dated September 22, 2008. As the landlord has neither returned the security deposit within 15 days after that time, nor made an application for dispute resolution, I find that the tenant has established a claim of \$557.19. This is comprised of the original amount of the security deposit of \$500.00, plus interest of \$7.19, in addition to the \$50.00 filing fee. I therefore grant the tenant a monetary order under section 67 of the Act for \$557.19.

For the information of the parties, section 38(6) of the Act provides:

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.

Notwithstanding the above provision, the tenant stated that she seeks only the return of the original amount of the security deposit plus interest, and recovery of the filing fee.

Finally, the attention of the parties is drawn to the provisions in section 19 of the Act concerning **Limits on amounts of deposits**, which provides in part as follows:

19(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.

In the case of the subject tenancy, as the monthly rent was \$850.00, the amount of the security deposit should have been \$425.00, not \$500.00.

Conclusion

Following from all of the above and pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of **\$557.19**. This order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: August 25, 2009

Dispute Resolution Officer