



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit in the amount of \$101.49. The application is inclusive of an application for recovery of the filing fee for the cost of this application in the amount of \$50. The tenant requests recovery of mailing costs. The tenant expressly waived any entitlement to compensation provisions under section 38 of the Residential Tenancy Act (the Act).

Both, the tenant and the landlord were represented at today's hearing

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant testimony is that the tenancy began on Sept 01, 2009 as a fixed term tenancy to June 30, 2010— although the tenant was permitted to occupy the unit earlier. The tenancy ended April 30, 2010 when the landlord agreed the tenant could end the tenancy earlier than the term of the lease. The landlord collected a security deposit of \$425 at the outset of the tenancy. There was no agreement as to a move in inspection conducted at the outset. There was no move out inspection conducted at the end of the tenancy and no agreement or evidence as to efforts expended to achieve the inspection. I do not have benefit of any condition inspection

report. Regardless, the landlord testified that on the day the tenant vacated they had in their possession the tenant's forwarding address in writing. The landlord subsequently returned the amount of \$323.51 to the tenant – retaining \$101.49 for purported damage to the unit.

Analysis

On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

Section 38(1) of the Act provides as follows (**emphasis for ease**)

- 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
 - 38(1)(a) the date the tenancy ends, and
 - 38(1)(b) the date the landlord receives the tenant's forwarding address in writing,the landlord must do one of the following:
 - 38(1)(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;
 - 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

As per the provisions stated above, I find that the landlord failed to repay all of the security deposit, or to make an application for dispute resolution to retain all or a portion of it within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

- 38(6) If a landlord does not comply with subsection (1), the landlord
 - 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord currently still holds part of the security deposit in the amount of \$101.49 and was obligated under section 38 to return all of the security deposit. The tenant has expressly waived any compensation provisions under Section 38 doubling the portion of the security deposit withheld.. As a result I find the tenant has established an entitlement claim for **\$101.49** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$151.49**. The tenant is not entitled to recover mailing costs; as such costs are not compensable under the Act.

Conclusion

I grant the tenant an order under section 67 for the sum of **\$151.49**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.