



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on August 29, 2010 for a month to month tenancy with a monthly rent of \$850.00 due on the 1st of each month and a security deposit of \$425.00 was paid on September 1, 2010. The tenancy ended on or before June 30, 2011.

The landlord's submit the tenant did not provide the landlords with sufficient time to arrange time off of work to complete a move out inspection with the tenant so they completed the move out inspection without the tenant, after she had vacated the property on June 29, 2011 without the tenant.

The tenant submitted a copy of a letter dated July 5, 2011 to the landlord providing her forwarding address. The landlord confirmed that the tenant's forwarding address was received on July 11, 2011

Analysis

Section 35 of the *Act* requires both the landlord and the tenant to participate in a move out inspection, however, the onus is on the landlord to provide the tenant with at least two opportunities for an inspection. The second opportunity must be conveyed to the tenant in writing and be in the approved form available on the Residential Tenancy Branch website.

Section 36 stipulates that if the landlord has provided the tenant with two opportunities with the second in writing and the tenant has failed to participate; the tenant extinguishes their right to the return of the security deposit. This section goes on to say that if the landlord fails in this obligation the landlord extinguishes their right to claim against the security deposit for damage to the residential property.

As the landlord failed in their obligation to provide a second written notice, I find the tenant has not extinguished her right to the return of the security deposit.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the landlords acknowledge receipt of the tenants forwarding address on July 11, 2011 I find the latest they could return the security deposit or file an Application for Dispute Resolution to claim against the security deposit was July 26, 2011. As the landlord's failed to do either, I find the landlord has not complied with Section 38(1).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$900.00** comprised of \$850.00 double the security deposit and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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*.

Dated: November 02, 2011.

Residential Tenancy Branch