



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on April 1, 2011 on a fixed term to March 31, 2012. Rent in the amount of \$1,480.00 was payable monthly and the Landlord took a security deposit in the amount of \$740.00 at the onset of the tenancy. The Tenants gave notice and ended the tenancy on June 14, 2011. The Tenants participated in finding new tenants and new tenants were found for the unit commencing June 15, 2011. The Tenant's provided their forwarding address to the Landlord on June 12, 2011. The Landlord only returned the amount of \$370.00 to the Tenants and the Landlord states that she retained a portion of the security deposit in compensation for the Tenants having moved into the unit on March 26, 2011. The Landlord submits in her materials that she gave the keys to the Tenants in advance of the tenancy in order for them to move their belongings into the unit but did not expect the Tenants to stay in the unit as well. The Landlord did not

file an application for dispute resolution to claim against the security deposit for this early move-in. The Tenant states that they are seeking return of double the security deposit.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Tenants are entitled to return of double the security deposit in the amount of \$1,480.00 less the amount of \$370.00 already paid by the Landlord leaving the amount of **\$1,110.00**. The Tenants are also entitled to return of the **\$50.00** filing fee for a total entitlement of **\$1,160.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,160.00**. 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*.

Dated: November 17, 2011.

Residential Tenancy Branch