



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 an Application for Dispute Resolution by the tenant for a Monetary Order for the return of double the security deposit and to recover the filing fee paid for this proceeding.

The tenant served the landlord by registered mail on September 16, 2011 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, and in written form, documentary form, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to receive double the security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on June 15, 2008. Rent for this unit was \$975.00 per month and was due on the 15th of each month. The tenant

paid a security deposit of \$487.50 on June 01, 2008. The tenant moved from the rental unit on June 15, 2011.

The tenant testifies that he gave the landlord his forwarding address by e-mail on August 29, 2011. The tenant testifies that he did not agree on any monetary amount being deducted from the deposit and testifies that the landlord did not give them opportunity to attend a move in or a move out inspection of the property at the beginning or end of the tenancy.

The tenant seeks to recover double the security deposit as it was not returned to the tenant within 15 days of the landlords receiving the tenants forwarding address. The tenant also seeks to recover the filing fee of \$50.00 paid for this application.

The landlord testifies that they inspected the property after the tenant had moved out and found the tenant had not cleaned the carpets, floors or unit. The landlord states the tenants security deposit was used to clean the unit plus additional money from the landlord in order to return the unit to its former condition. The landlord testifies at the end of the tenancy the tenant wrote a note to the landlord to instruct the landlord to deduct an amount from the deposit to repair a small area of paint damage on the wall. No amount was specified in this note. The landlord agrees they did not conduct a move in or move out condition inspection. The landlord states she did receive the tenants forwarding address.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit

then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

The landlord testifies the tenant agreed they could keep some of the deposit for damage to a wall however no monetary amount was agreed upon. The landlord also agrees that they did not conduct a move in or move out condition inspection. In failing to carry out these inspections with the tenants the landlord has extinguished their right to keep the security deposits pursuant to s.24(2) and s.36(2) of the *Act*.

Based on the above and the evidence presented I find that the landlord agrees they did receive the tenants forwarding address in writing on August 29, 2011. As a result, the landlord had until September 13, 2011 to return the tenants security deposit. I find the landlord did not return the security deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$975.00** plus accrued interest on the original amount of **\$4.28** pursuant to section 38(6)(b) of the *Act*.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order as follows:

Double the security deposit	\$975.00
Accrued interest on original amount	\$4.28.
Filing fee	\$50.00
Total amount due to the tenants	\$1029.28

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,029.28**. The order must be served on

the respondent and is enforceable through the Provincial Court 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 30, 2011.

Residential Tenancy Branch