



Dispute Resolution Services

Page: 1

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 Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for return of the security deposit and return of rent paid in advance. The Tenant and Landlord 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 September 12, 2011 and ended on October 31, 2011. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$375.00. Rent in the amount of \$500.00 was payable monthly. A move-in and move-out inspection was not offered by the Landlord or completed by the Landlord and Tenants. On August 24, 2011, the Tenant paid the Landlord in advance for rent for the months of October, November and December 2011 in the amount of \$1,500.00. On September 10, 2011, the Tenant paid a further amount of \$1,000.00 for future rent payable.

On September 28, 2011, the Tenant provided notice to end the tenancy for October 31, 2011. On the same day, the Landlord gave the Tenant a Notice of Inspection of the unit that notes the Landlord has reason to believe that the Tenant has abandoned the premises. On October 1, 2011, the Tenant provided a letter to the Landlord indicating that she was moving items out of the unit on this day but not vacating the premises. This letter continues with the request that the Landlord immediately refund her rent paid in advance. In a letter dated October 21, 2011, the Tenant informed the Landlord that

the unit was empty and the keys were returned. This letter also informs the Landlord of the forwarding address and again requests return of the rental amounts paid in advance. The Landlord did not file an application for dispute resolution to make a claim against the security deposit and states that he did not return the advance rent as he believed that the Tenant, by way of the letter dated October 1, 2011, has rescinded the notice to end the tenancy. The Tenant stated at the hearing that return of double the security deposit was not being waived.

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 Landlord is required to pay the Tenants double the security deposit in the amount of **\$750.00**. Although the Landlord relies on a sentence in the October 1, 2011 letter as evidence of rescission of the notice to end the tenancy, this interpretation of the letter is not reasonable given the remainder of the letter and the context in which it was written. I therefore find that the Tenant has substantiated her claim to return of the rental monies paid in advance from the date November 1, 2011 in the amount of **\$2,000.00**. The Tenant is also entitled to return of the **\$50.00** filing fee for a total entitlement of **\$2,800.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$2,800.00**. 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 Act.

Dated: February 06, 2012.

Residential Tenancy Branch