



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

The Landlord applied on October 28, 2011 for:

1. An Order to retain all or part of the security deposit – Section 38;
2. A Monetary Order for compensation for loss – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on November 25, 2011 for return of the security deposit.

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 return of the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The Parties signed a tenancy agreement on September 26, 2011 for the tenancy to start on November 1, 2011 with a fixed term ending October 31, 2012. On the date of signing, the Landlord took a security deposit of \$437.50. The Parties agree that the Tenant left a message on the same day ending the tenancy and the Landlord states that this message was received the following day from the answering service who informed the Landlord only that the Tenant was ending the tenancy and would be away for a

period of time. The Landlord states that the unit was advertised for rent again on September 28, 2011. The Tenant states that she left a detailed message that due to a family emergency she would have to end the tenancy and would be away for a period of time attending the family emergency. The Tenant states that the Landlord was not told that the Tenant was moving anywhere.

The Parties agree that the Tenant sent a letter dated October 14, 2011 requesting return of the security deposit. The Landlord states that upon receiving this letter, they made this application to retain the security deposit and to claim liquidated damages. The Landlord argues that an application was not made earlier as the Tenant had not provided a forwarding address until October 14, 2011. The Tenant states that the Landlord had her current address on the application to rent, that this is the address that is also contained on the Landlord's application and that there was no forwarding address that could be expected by the Landlord given the message details left for the Landlord. The Tenant does not waive return of double the security deposit.

The Landlord states that the Tenant ended the tenancy before the fixed term and claims liquidated damages as set out in the tenancy agreement. The relevant portion of the liquidated damages clause in the tenancy agreement provides as follows: "If the tenant ends the fixed term tenancy . . . before the end of the term . . . the tenant will pay to the landlord the sum of \$500.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit . . . ". The Landlord states claims \$500.00.

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.

Given the undisputed evidence of the Parties, I find that the tenancy ended on September 28, 2011, prior to the anticipated occupancy date. Although the Landlord relies on the Tenant's letter of October 14, 2011 as the date from which the time to make an application to retain the security deposit starts, accepting the Tenant's evidence that the Landlord was informed of the reason for ending the tenancy and accepting that the end occurred not as a result of the Tenant's move to a forwarding location, I find that the Landlord's reliance on waiting for a forwarding address from the Tenant to be unreasonable. As the Landlord did not file the application within the fifteen days of the end of the tenancy, I find that the Landlord must repay the Tenant double the security deposit in the amount of **\$875.00**.

Given that the Tenant ended the tenancy before the fixed term and given that the tenancy agreement provides for the payment of liquidated damages of \$500.00 upon an early end of the tenancy, I find that the Landlord has substantiated an entitlement to \$500.00. The Landlord is also entitled to recovery of the filing fee for a total entitlement of **\$550.00**. Setting the two awards off each other leaves the amount of **\$325.00** owing to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$325.00**. 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: April 2, 2012.

Residential Tenancy Branch