



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

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

1. An Order for return of double the security deposit - Section 38; and
2. A Monetary Order for compensation for loss – Section 67.

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 double the security deposit?

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The tenancy began on December 1, 2010 and ended on August 1, 2012. Rent in the amount of \$600.00 was payable monthly. . A move-in inspection was mutually conducted by the Parties on December 2, 2010.

The tenancy agreement, filed by the Landlord, notes that the Tenant paid \$300.00 for a security deposit and \$150.00 for a pet deposit. The Addendum to the tenancy agreement notes that the security deposit is required before the tenant moves into the premises. The Tenant states that the Ministry made the payments for the security deposit and does not know how much was paid. The Landlord states that none of the security deposit was paid. It is noted in the materials supplied by the Landlord that at least \$100.00 was paid for a security deposit.

The Landlord states that the Tenant agreed to conduct a move-out inspection on August 1, 2011 but that when the Landlord appeared at the agreed time, the Tenant was not finished moving and the Parties agreed to meet again at 6:00 pm on the same date. The Landlord states that the Tenant did not appear and that after calling the Tenant several times over the next four days, the Tenant finally responded and refused to conduct the move-out inspection. The Tenant states that the Tenant appears on the agreed time of 6:00 pm on August 1, 2011 but that the Landlord was not at the unit so the Tenant left. The Tenant states that the Landlord did not call her after that to offer another opportunity to conduct the move-out inspection.

The Tenant states that the Ministry sent a cheque of \$700.00 to the Landlord for August rent in error and that the Landlord only returned a portion of that amount to the Tenant. The Landlord states that the Ministry did send a \$700.00 cheque for August rent and utilities, that the Landlord cashed this cheque and that the amount of \$447.20 was returned to the Tenant.

The Tenant states that the forwarding address was provided to the Landlord on August 16, 2012 and that the Landlord failed to return the security and pet deposit.

The Landlord states that the Tenant owes unpaid utilities, costs for lost rental income and costs for damages to the unit. The Landlord did not file an application to make these claims against the Tenant.

Analysis

Sections 35 of the Act requires a landlord and tenant to mutually conduct move-out inspection and to complete a report. Section 36 of the Act provides that where the Landlord has provided two opportunities to the tenant for a move-out inspection and the tenant fails to participate on either occasion, the right of the tenant to return of a security or pet deposit is extinguished. Given the directly conflicting evidence from the Parties in relation to the attendance by the Tenant at the move-out inspection and a second offer

made by the Landlord for the move-out inspection, I am unable to determine that the Tenant's right to return of the security deposit has been extinguished.

Rent is not payable following the end of a tenancy. As the Tenant provided notice to end the tenancy for August 1, 2011 and as the Landlord accepted that date, I find that no rent is payable for August 2011. Given the evidence of the Landlord that the amount of \$700.00 was received by the Landlord for August rent and utilities and that the Landlord repaid the Tenant \$447.20, I find that the Tenant has substantiated on a balance of probabilities, an entitlement of **\$252.80** from the Landlord.

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 Tenant's evidence of uncertainty on how much security deposit was paid to the Landlord and given the Landlord's evidence indicating that the amount of \$100.00 was assigned as a security deposit from monies received by the Landlord, I find that the Tenant paid a security deposit of \$100.00. 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 **\$200.00**.

The Landlord is at liberty to make an application in relation to the states claims for lost rental income, unpaid utilities and damages to the unit.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$452.80**. 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: March 29, 2012.

Residential Tenancy Branch