



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 Tenant 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 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 February 15, 2009 and ended on January 31, 2012. At the outset of the tenancy, the Landlord collected a security deposit from the Tenants in the amount of \$1,250.00. A move-in inspection was mutually conducted by the Parties on February 26, 2009 and a move-out inspection was mutually conducted by the Parties on January 30, 2012. The Tenant provided a forwarding address on the move-out inspection form. The Tenant did not sign the move-out inspection but states at the Hearing that the Tenant agreed at the time of the move-out inspection to a deduction of \$200.00 from the security deposit for cleaning costs. The Tenant did not receive a copy of the move-out inspection. On February 1, 2012, the Tenant instructed the Landlord to hold off return of the security deposit until further notice as the Tenant was in a marital dispute with the other tenant.

The Landlord states that there was some confusion on which Tenant the security deposit should be sent to but that on February 2, 2012, the second tenant instructed the Landlord to return the security deposit to the Tenant. The Landlord returned a cheque for \$875.00 to the Tenant on February 24, 2012. The Landlord states that the Tenant has not paid outstanding amounts owing to the Landlord and that no application was made by the Landlord to retain any portion of the security deposit in relation to that outstanding amount.

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 Tenant double the security deposit plus interest in the amount of **\$2,500.00**. Given the evidence of the Tenant, I find that this amount is reduced by **\$200.00** for cleaning costs agreed to at move-out and by **\$875.00** as already received by the Tenant, leaving a remaining entitlement of **\$1,425.00**. The Tenant is also entitled to return of the **\$50.00** filing fee for a total entitlement of **\$1,475.00**.

The Landlord is at liberty to make an application for losses claimed beyond that agreed to by the Tenant for cleaning costs.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,475.00**. 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: April 04, 2012.

Residential Tenancy Branch