



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNDC, MNSD, FF
 Landlord MND, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for unpaid rent or utilities, for damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The hearing started at 11:00 a.m. as scheduled, however the Landlord did not dial into the conference call. In the absence of any evidence from the Landlord to support the application, the application is dismissed without leave to reapply.

The Tenant filed for compensation for loss or damage under the Act, regulations or tenancy agreement, for the return of double the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Tenant to the Landlord was done by registered mail on March 16, 2012, in accordance with section 89 of the Act.

Issues to be Decided

Landlord:

1. The Landlord's application is dismissed without leave to reapply.

Tenant:

1. Is the Tenant entitled to recover double the security deposit?
2. Are there loss or damages and if so how much?
3. Is the Tenant entitled to compensation for loss or damages and if so how much?

Background and Evidence

This tenancy started on February 22, 2011 as a month to month tenancy. Rent was \$1,100.00 per month for the house and \$100.00 per month for the garage, payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$600.00 on February 15, 2011.

The Tenant said she moved out of the rental unit on October 8, 2011 and that she gave the Landlord notice that she was ending the tenancy by email on September 6, 2011. The Tenant said she understood the tenancy started on February 22, 2011 therefore she believed that the tenancy went from the 22nd of each month to the next month. The Tenant said she thought she had given the Landlord proper notice to end the tenancy.

The Tenant continued to say she gave the Landlord her forwarding address in writing on October 8, 2011 and she included a copy of the note she wrote to the Landlord as proof of providing a written forwarding address. The Tenant said there was no move in or move out condition inspection reports completed. The Tenant said she has not received their security deposit back and as a result she was told by the Residential Tenancy Branch, that she could apply for double the security deposit. The Tenant said she is requesting 2 X \$600.00 (the security deposit) in the amount of \$1,200.00 as well as the filing fee for this proceeding of \$50.00, the costs of photographs in her evidence package of \$31.00 and interest on the security deposit of \$6.50. The Tenant said her total claim is for \$1,287.50.

Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenant's security or pet deposit is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord's right to claim against the Tenant's security deposit for damage is extinguished.

With respect to the Tenant's application for double her security deposit in the amount of \$1,200.00:

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenant's testimony and written evidence that she did give the Landlord a forwarding address in writing on October 8, 2011. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution by October 23, 2011. Consequently I find for the Tenant and grant an order for double the security deposit in the amount of \$1,200.00 (2 X \$600.00).

Further I dismiss the Tenant's request for interest on the security deposit of \$6.50 as the applicable interest rate established by the Residential Tenancy Branch for the time of this tenancy is 0%; therefore there is no accrued interest on the security deposit.



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In addition the Tenant request for reimbursement of photograph expenses of \$31.00 is dismissed. The cost of providing evidence to a dispute resolution hearing is not an eligible claim for the tenancy.

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding from the Landlord. As the Landlord's application is dismissed; I order the Landlord to bear the \$50.00 filing fee for his application, which he has already paid.

A monetary order has been issued to the Tenant for the following:

Double Security deposit	\$ 1,200.00	
Filing fee	\$ 50.00	
Total		\$ 1,250.00

Conclusion

The Landlord's application for unpaid rent, damages to the unit and to retain the Tenant's security deposit is dismissed without leave to reapply.

A monetary order has been issued to the Tenant for \$1,250.00.

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*.

Residential Tenancy Branch