



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to claim double the security deposit and to recover the filing fee from the landlords for the cost of this application.

The tenant and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant provided some additional evidence to the Residential Tenancy Office but did not provide this evidence to the landlords. Therefore this additional evidence has not been considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to recover double the security deposit?

Background and Evidence

Both parties agree that this tenancy started on May 01, 2011 for a three month fixed term. Another tenancy agreement was entered into on September 01, 2011 which was due to expire on February 28, 2012. Rent for this unit was agreed at \$2,200.00 per month and was due on the first day of each month. The tenant paid a security deposit of

\$1,100.00 on May 01, 2011. The parties attended a move in and a move out condition inspection of the property and the landlord's agent acknowledges receipt of the tenants forwarding address on January 29, 2012.

The tenant testifies that there was a verbal agreement between the tenants residing in the unit and the landlord to end the tenancy at the end of January, 2012. If the unit could not be re-rented the tenants would remain responsible for the rent for February, 2012. The tenant testifies that the unit was re-rented for February 01, 2012. The tenant testifies that she requested the return of the security deposit and the landlord's agent informed the tenant that they would hold onto the deposit for 15 days in case there were any problems. The tenant testifies that the landlord has failed to return the security deposit and has not filed an application to keep the deposit. The tenant therefore seeks to recover double the security deposit to the sum of \$2,200.00.

The landlord's agent disputes the tenants claim and testifies that there is a clause in the tenancy agreement that informs the tenants that they have to pay a service charge of \$1,100.00 for a change over of tenants if the tenants end the tenancy before the end of the fixed term. The landlord dispute that they agreed the tenants could end the tenancy early but agree the unit was re-rented on February 01, 2012.

The landlord's agent testifies that they were unaware that they had to file an application to keep the security deposit and thought that by having this term in the tenancy agreement it was sufficient to enable the landlords to retain the security deposit.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit

then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address in writing on January 29, 2012. As a result, the landlords had until February 13, 2012 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the security deposit and have not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$2,200.00** pursuant to section 38(6)(b) of the *Act*.

As the tenant has been successful with this claim, I find the tenant is entitled to recover the **\$50.00** filing fee from the landlords pursuant to section 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,250.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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: June 27, 2012.

Residential Tenancy Branch