

DECISION

Dispute Codes OLC, 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 double the security deposit - Section 38;
2. An Order that the Landlord comply with the Act – Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on March 1, 2011 on a fixed term to February 28, 2012. The Tenant provided notice and ended the tenancy on October 31, 2011. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$550.00. The Parties completed both a move-in and move-out inspection. The Tenant provided its forwarding address on May 9, 2012. The Landlord did not make an application to retain the security deposit and did not return the security deposit. The Landlord states that the tenancy agreement provides that upon ending the tenancy before the fixed end date, the security deposit is not required to be returned to the Tenant but may be kept by the Landlord. This section is contained in the addendum to the tenancy agreement. The Tenant claims \$1,100.00. The Tenant states that the request for an order that the Landlord comply with the Act is in relation to the Landlord returning the security deposit.

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.

Section 5 of the Act provides that landlords and tenants may not contract out of the Act and that any attempt to do so is of no effect. As the section contained in the addendum of the tenancy agreement conflicts with the requirements of the Act in relation to the return of the security deposit, I find that the section authorizing the Landlord to retain the security deposit due to an early end of tenancy is of no effect.

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 **\$1,100.00**. The Tenant is also entitled to return of the **\$50.00** filing fee for a total entitlement of **\$1,150.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,150.00**. 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: July 25, 2012.

Residential Tenancy Branch