



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 Tenants 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. 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 amount claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy began on April 1, 2011 and ended on April 30, 2012. Rent in the amount of \$1,300.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$650.00. Although the Parties conducted a move-in inspection and signed a copy of that report, no copy of the move-in condition report was provided to the Tenants. Both Parties conducted a move-out inspection however no condition inspection report was completed or a copy provided to the Tenants. The Tenants provided their forwarding address in writing to the Landlord on May 4, 2012.

The Landlord states that nothing was wrong with the unit at move-out but that the Tenants did not complete the painting started on one of the bedrooms. The Landlord states that the Tenants agreed to complete this painting but have not done so. The Tenant does not dispute that they agreed to complete painting the unit but that they were unable to gain access to the unit. The Landlord did not make an application for dispute resolution to claim against the security deposit and did not return the security deposit to the Tenants.

Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 18 of the Residential Tenancy Regulation provides that a landlord must give the tenant a copy of the signed condition inspection report within 7 days after the condition inspection is completed. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. As the Landlord did not provide a copy of the move-in condition inspection report to the Tenants, I find that the Landlord's right to claim against the security deposit is extinguished.

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 Tenants are entitled to return of double the security deposit plus zero interest in the amount of **\$1,300.00 (650.00 x 2)**. The Tenants are also entitled to return of the **\$50.00** filing fee for a total entitlement of

\$1,350.00. The Landlord is at liberty to make an application for dispute resolution in relation to the Landlord's claim for painting to the unit.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,350.00.** 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 *Residential Tenancy Act*.

Dated: August 20, 2012.

Residential Tenancy Branch