



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 filed on June 28, 2012, for a monetary order for the return of the security deposit and compensation under Section 38 of the Act. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

During the course of this hearing the landlord did not attend the proceeding. The tenant testified that they served the landlord with notice of today's hearing by registered mail sent on June 29, 2012. It is noted that the landlord submitted an evidence package in rebuttal to the Residential Tenancy Branch on August 07, 2012, which the tenant states they also received. Therefore, I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit and compensation under Section 38 of the Act?

Background and Evidence

The undisputed facts before me are as follows.

The tenancy ended on June 30, 2012. The landlord collected a security deposit of \$950.00 at the outset of the tenancy, which the landlord retains in its entirety. There was no move in inspection conducted at the outset. There was a "walkthrough" at the end of the tenancy but no recording of the inspection. I do not have benefit of evidence

from either party to the contrary. The tenant provided a copy of their Notice to End Tenancy dated May 18, 2010 with an effective end date of June 30, 2010. The letter also includes the tenant forwarding address. The undisputed testimony is that the tenant sent this letter to the landlord by registered mail, which they claim the landlord acknowledged receiving and there has not been nor exists an issue in this regard. I note that the landlord's evidence submission does not dispute knowledge respecting the tenant's forwarding address; but rather, speaks solely to a claim that the tenant is purportedly responsible for damage to the rental unit floors. I further note the landlord's evidence provides copies of invoices for the remediation of the referenced flooring - all dating March and September 2011 – which the tenant testified, would have been following a tenancy following the applicant's tenancy.

The tenant acknowledges they owe the landlord \$50.00 for damage to a refrigerator compartment.

Analysis

On preponderance of the evidence before me and on the balance of probabilities, I have reached a decision.

On the face of the evidence, I accept the tenant's evidence that the landlord came into possession of the tenant's forwarding address on or before the tenant vacated on June 30, 2012.

Section 38(1) of the Act provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$950.00 and was obligated under section 38 to return this amount. The amount which is doubled is the \$950.00 original amount of the deposit. As a result I find the tenant has established an entitlement claim for **\$1900.00**. From this sum I deduct \$50.00 as per the tenant's testimony they owe this amount to the landlord. The tenant and is further entitled to recovery of the **\$50.00** filing fee, for a total entitlement of **\$1900.00**.

Conclusion

I grant the tenant an order under section 67 for the sum of **\$1900.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: September 10, 2012

Residential Tenancy Branch