



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 for a monetary order under the *Residential Tenancy Act* (The Act) for the return of the security deposit 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.

Both, the tenant and the landlord were represented at today's hearing, and were provided opportunity to provide document submissions prior to this hearing, provide their testimony in respect to this claim, and to discuss their dispute towards a mutually agreed resolution.

Issue(s) to be Decided

Is the tenant entitled to the security deposit amount claimed in accordance to Section 38?

Background and Evidence

The undisputed facts before me are as follows. The tenancy began on March 01, 2012 and ended on June 21, 2012. Rent was \$1500 per month. The landlord collected a security deposit of \$750.00 at the outset of the tenancy. The landlord did not conduct a start of tenancy inspection at the outset. The landlord did not conduct an end of tenancy inspection at the end of the tenancy. The landlord testified that on July 04, 2012 they became in possession of the tenant's forwarding address in writing.

The landlord claims the tenant was responsible for utilities of the rental unit and at the end of the tenancy there were outstanding utilities of \$278.00 - with which the tenant agreed the landlord is owed and should be compensated. The landlord determined that the tenant was also responsible for grass cutting, a quantum of cleaning and for a broken refrigerator door inner panel – all of which the tenant disagrees.

Analysis

On preponderance of the evidence I have reached a decision. Despite the parties' disagreement respecting some of the landlord's stated claims, **Section 38(1)** of the Act provides as follows (**emphasis for ease**)

Return of security deposit and pet damage deposit

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 July 04, 2012, 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 \$750.00 and was obligated under Section 38 to return this amount. The amount which is doubled is the \$750.00 original amount of the deposit before interest. As a result I find the tenant has established an entitlement claim for \$1500.00 - from which I deduct the agreed amount for utilities of \$278.00, for a net entitlement of **\$1222.00**. The tenant is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$1272.00**.

Conclusion

I grant the tenant a Monetary Order under section 67 for the sum of **\$1272.00**. 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: October 09, 2012

Residential Tenancy Branch