



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FF, MNSD

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit under section 38. 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

Some documentary evidence was submitted prior to the hearing. I have thoroughly reviewed all submissions. I also gave the parties the opportunity to give their evidence orally and the parties were given opportunity to settle their dispute but were unable to agree.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed facts before me are as follows. The tenancy began on June 15, 2012 as a short term fixed tenancy agreement effectively ending on August 31, 2012. The tenant vacated earlier on August 21, 2012. The landlord collected a security deposit of \$875.00 at the outset of the tenancy and still retains it in full. There was no move in inspection conducted at the outset in accordance with the Act or Regulations and there was no inspection report produced by the landlord and provided to the tenant. There was no move out inspection conducted at the end of the tenancy before or after the tenant vacated the unit. The landlord elected not to conduct and record an end of tenancy inspection on their own despite their testimony that the rental unit was left in a deficient state for which they incurred costs.

The tenant claims that on August 21, 2012 they provided the landlord with their forwarding address by e-mail. The landlord acknowledges receiving the forwarding address, and that they were in possession of it at the end of the tenancy. The parties agree that e-mail was a normal mode of written communication between them.

Analysis

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

It must be noted that **Sections 23 and 35** of the Act prescribe the duties respecting condition inspections. Sections 24 and 36 highlight the consequences if the report requirements are not met. Only in part, **Section 36** of the Act states as follows:

Consequences for tenant and landlord if report requirements not met

36 (2) Unless the tenant has abandoned the rental unit, **the right of the landlord to claim against a security deposit** or a pet damage deposit, or both, for damage to residential property **is extinguished if the landlord**

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord did not conduct condition inspection reports in concert with the regulations and was and therefore precluded from making a claim to retain the deposit.

Section 38 of the Act further provides, in part, 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.

and

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.

In this matter I accept the parties' testimony in respect to the forwarding address and I accept that e-mail communication was a normal and usual mode of communication between the parties. 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: **(emphasis for ease)**

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 \$875.00 and was obligated under section 38 to return this amount. The amount which is doubled is the \$875.00 original amount of the deposit. As a result I find the tenant has established an entitlement claim for **\$1750.00** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$1800.00**.

Conclusion

I grant the tenant an Order under section 67 for the sum of **\$1800.00**. 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 29, 2012

Residential Tenancy Branch