



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened in response to an application by the Tenant pursuant to section 38 of the *Residential Tenancy Act* (the “Act”) for an Order returning the security deposit. 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 return of the security deposit?

Background and Evidence

The tenancy first started on June 15, 2010 for a one year period. On April 5, 2011, the Parties signed a second tenancy agreement with a fixed end date of May 31, 2012. At the outset of the tenancy the Landlord collected \$1,500.00 as a security deposit. The Parties mutually conducted a move-in inspection on June 15, 2010.

The Tenant states that in May 2012 the owner of the unit passed away and the Tenant was informed by the Landlord that the unit would be immediately placed on the market and that the tenancy would not be continued. The Tenant states that efforts were made to move out of the unit as soon as possible and that a new tenancy was found for June 15, 2012. The Tenant submitted in the evidentiary materials that the Landlord indicated that the unit would be extensively renovated in order to sell the unit. The Tenant states that the Landlord provided the Tenant with a contractor to provide services to the Tenant for repairs and that the Tenant used this contractor to make repairs to the unit that were completed on July 11, 2012. The Landlord states that the keys to the unit were left in the unit on July 10, 2012 and that the locks to the unit were changed

following the receipt of the keys as this practice is followed whenever a tenant leaves a unit.

The Tenant states that the Landlord was called several times throughout May, June and early July 2012 and that at no time did the Tenant receive any request from the Landlord for a move-out inspection. The Tenant states that when the Landlord was called on July 11, 2012 seeking an opportunity for an inspection, the Tenant was told that the inspection occurred the previous day without the Tenant. The Tenant states that her forwarding address was provided by email on July 22, 2012 and the Landlord acknowledged having received this address. The Tenant states that the Landlord has not returned the security deposit and does not waive return of double the deposit.

The Landlord states that the Tenant was served with a Notice to End Tenancy with an effective date of June 14, 2012. The Landlord states that although many conversations were held with the Tenant in relation to the cleaning and repair of the unit the Landlord did not offer the Tenant an opportunity over the phone to do an inspection as it is their practice to make such offers in writing and to post these offers on the door of the unit. The Landlord states that such a written offer was posted on the unit on June 29, 2012 and again on July 4, 2012. The Landlord states that no persons were noted to be in the unit when the notice was placed on the door. The Landlord submitted a move-out inspection report that indicates that the move-out inspection took place on July 10, 2012 without the Tenant present.

The Tenant states that the move-out condition report was sent to the Tenant with a letter and that the envelope was post marked August 14, 2012.

Analysis

Section 35 of the Act requires a landlord and tenant to mutually inspect the unit at the end of the tenancy and that a landlord must offer the tenant at least two opportunities for the inspection. Section 16 of the Residential Tenancy Regulation (the "Regulations") provides that a landlord and tenant must attempt in good faith to mutually agree on a

date and time for a condition inspection. Section 18 of the Regulations provides that a landlord must give the tenant a copy of the inspection report promptly and no later than 15 days after the later of the date the inspection is completed and the date the landlord receives the tenants forwarding address in writing. Section 36 of the Act provides that the right of a landlord to claim against a security deposit is extinguished if the landlord does not comply with section 35 or does not provide the tenant with a copy of the move-out inspection in accordance with the Regulations.

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.

Considering the undisputed evidence that despite conversing with the Landlord on several occasions prior to July 10, 2012, the Tenant was not informed of a date for an inspection and considering that the Landlord made offers to inspect the unit by posting a notice on the unit after the effective date of the Notice to End Tenancy and at time when the Tenant may have no longer been at the unit, I find that the Landlord did not act in good faith to make an offer for inspection. Further, based on the undisputed evidence that the Tenant did not receive a copy of the move-out inspection report until after August 14, 2012, I find that the Landlord's right to make a claim against the security deposit was extinguished.

As the Landlord's right to claim against the security deposit was extinguished and as the Landlord failed to return the security deposit to the Tenant within 15 days of the receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenant double the security deposit. The Tenant is therefore entitled to a monetary amount of **\$3,000.00.**

Conclusion

I Grant the Tenant a monetary order under Section 67 of the Act for **\$3,000.00**. 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: November 01, 2012.

Residential Tenancy Branch