



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38
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 amounts claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following is undisputed evidence: On June 7, 2012, the Parties signed a tenancy agreement to rent the unit as of July 1, 2012 on a month to month basis. Rent of \$1,400.00 was payable monthly. The Landlord collected a security deposit of \$600.00 which was deposited to the Landlord’s account on June 8, 2012.

The Tenant states that between June 21 and 22, 2012, the Tenant called the Landlord numerous times to enquire about when they could start moving their belongings into the unit. The Tenant states that on the last call, the Landlord’s mother answered the call and told the Tenant that she owned the unit, that she was living in the unit and that she was upset to discover upon coming home to find her belongings had been moved out. The Tenant states that the Landlord’s mother told the Tenant that she has had problems

with her son like this before. The Tenant states that upon being told by the Landlord's mother that they could not move into the unit, the Tenant requested the return of the security deposit but that the Landlord refused. The Tenant provided the Landlord with an address for the delivery of the security deposit and it is noted that the Tenant's address was also provided in the application for dispute resolution dated October 25, 2012.

The Landlord states that the Tenant told him that he wanted to delay moving into the unit until August 2012 and that the Tenant was told that he would still be held liable for July 2012 rent. The Landlord states that he retained the security deposit for lost rental income. The Tenant provided a submission from his previous Landlord that states that the tenant gave notice to end the tenancy for July 31, 2012 but that the Tenant informed this person on July 28, 2013 that his new tenancy had fallen through.

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenancy under a tenancy agreement take effect from the date the tenancy agreement is entered into whether or not the tenant ever occupies the rental unit. 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.

Based on the undisputed evidence that the tenancy agreement was ended prior to the tenancy start date, that the Tenant requested return of the security deposit and provided a forwarding address, and that the Landlord failed to return the security deposit within 15 days of I find that the Landlord must repay the Tenant double the security deposit of \$1,200.00. The Tenant is also entitled to recovery of the filing fee for a total monetary entitlement of \$1,250.00.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,250.00**. 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 Act.

Dated: January 28, 2013

Residential Tenancy Branch

