



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Va Center Management Inc
and [tenant name suppressed to protect privacy]

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 double 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 amount claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on February 1, 2008. The Tenant states that the tenancy ended on October 1, 2012 and the Landlord states that the tenancy ended on October 2, 2012. Rent of \$870.00 was payable monthly and at the outset of the tenancy the Landlord collected \$425.00 as a security deposit from the Tenant. The Tenant states that no move-in inspection was done or offered by the Landlord and the Tenant does not have a copy of the condition inspection report. The Landlord states that a move-in inspection was conducted on January 27, 2008 and that a condition inspection report was completed. The Landlord has no recall of whether a copy of the inspection report was provided to the Tenant and states that no copy is available with the Landlord. The Parties mutually conducted a move-out inspection on October 14, 2012 and the Tenant

agreed to deductions of \$180.00 from the security deposit. The Tenant states that the forwarding address was provided in writing to the Landlord on both October 12, 2012 and October 14, 2012. The Landlord states that the forwarding address was only received on October 14, 2012. The Parties agree that the Tenant was provided with \$250.87 on November 13, 2012. It is noted from the copy of the agreed deduction statement that this amount represents the \$245.00 remaining after the agreed deductions and includes interest of \$5.84.

The Landlord argues that the Tenant does not have a right to return of double the security deposit as the Tenant filed an application for return of double the security deposit after receiving the agreed amount. Further, the Landlord argues that the Tenant refused to negotiate a settlement after the application was served on the Landlord and that there should be an onus on the Tenant to try to settle the dispute prior to making an application for dispute resolution. Both the Landlord and the Tenant provided written submissions in relation to problems arranging the move-out inspection. The Landlord states that since the keys were not returned to the Landlord until the move-out inspection date of October 14, 2012, the Tenant owes rent to the Landlord for that portion of October rent. In the written submissions, the Landlord states that "we are not filing against Carolyn for being 14 days late with the return of the keys." It is noted that no application for dispute resolution has been made by the Landlord.

Analysis

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. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenants double the security deposit in the amount of **\$850.00** plus interest payable of **\$5.84** on

the original amount of \$425.00. The Tenant is also entitled to recovery of the **\$50.00** filing fee for a total monetary entitlement of **\$905.84**. As the Tenant agreed to a deduction of **\$180.00** and received return of **\$250.87** that included the \$5.87 interest payable, I find that the Landlord owes the Tenant the remaining amount of **\$474.97**.

In making the above determination, I have considered the Landlord's argument that the Tenant should not be able to make a claim for return of double the security deposit where the security deposit has been returned. I find that this argument is not provided for in the Act and therefore cannot be considered as a defense to the positive obligation of the Landlord to return double the security deposit as contained in the Act. I have also considered the Landlord's argument that the Tenant should be required to negotiate a settlement however again there is nothing in the Act that sets this out as a requirement prior to attending the hearing.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$474.97**. 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: February 20, 2013

Residential Tenancy Branch

