



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 for the return of the security deposit and compensation 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 (applicant and respondent) were represented at today's hearing and participated with their testimony. The tenant provided prior document submissions to the hearing. The landlord acknowledged receiving the tenant's evidence. The parties were also permitted to discuss their dispute with a view to settling their dispute.

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed facts before me, as testified by both parties, are as follows.

The tenancy began on September 01, 2011 and ended on December 01, 2012 as a written tenancy agreement. Rent was \$1545.00 per month. At the outset of the tenancy the landlord collected a security deposit and pet damage deposit in the sum of \$1600.00. There was no move in inspection or move out inspection conducted in accordance with the Act with the requisite inspection reports. Regardless, the landlord testified that prior to the end of the tenancy they were in possession of the tenant's forwarding address in writing, as provided into evidence. After the tenancy ended the landlord returned the tenant the original deposits in the amount of \$1600.00 on January 11, 2013. The tenant testified they owe the landlord \$200.00 for unpaid utilities of the tenancy and agreed for this amount to be deducted from any monetary award resulting from this matter.

Analysis

On preponderance of the relevant evidence I have reached a decision.

I find there is no evidence the tenant's right to the return of the security deposit has been extinguished.

Section 38(1) of the Act provides 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.

The landlord was in possession of the tenant's forwarding address prior to the end of the tenancy. I find that the landlord failed to repay both deposits, or to make an application for dispute resolution within 15 days of the tenancy ending 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 collected security and damage deposits totalling \$1600.00 and was obligated under section 38 to return this amount within 15 days of the tenancy ending. The amount which is doubled is the \$1600.00 original amount of the deposits. As a result I find the tenant has established an entitlement claim for \$3200.00 and is further entitled to recovery of the \$50 filing fee for a total entitlement of \$3250.00. From this amount I deduct the returned amount of \$1600.00 and the agreed amount to be deduct of \$200.00, leaving the tenant a monetary award of **\$1450.00**.

Conclusion

I grant the tenant an Order under section 67 for the amount of **\$1450.00**. 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: March 13, 2013

Residential Tenancy Branch

