



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 pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38; and
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 return of the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Parties met on September 9, 2012 to view the unit. On September 13, 2012 the Landlord collected a security deposit of \$466.67 for the rental of the unit at a rental amount of \$1,400.00. Following the receipt of the security deposit the Landlord informed the Tenant that the unit was not available to the Tenant. The Tenant verbally requested the return of the security deposit to the Tenant’s address as provided in the rental application form. The Landlord states that the security deposit was returned to the addresses contained in the two security deposit cheques but that they were returned.

The Tenant provided a forwarding address in writing by registered mail on December 14, 2012 and on December 21, 2012 the Tenant received two money orders for \$178.00 each. The Tenant states that these money orders were accepted as partial payment and were cashed. The Landlord states that deductions were made from the security deposit for registered mail costs, cheque costs and a service charge. The Tenant does not waive the return of double the security deposit. The Landlord did not make an application for dispute resolution to claim any amount of the security deposit.

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant 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. Based on the undisputed evidence that the Landlord collected a security deposit, I find that a tenancy agreement was entered into on September 13, 2012.

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 ended in September 2012, that the Tenant provided the forwarding address in writing on December 14, 2012, that the Landlord did not make an application for dispute resolution claiming against the security deposit and that, although a portion of the amount was returned within 15 days receipt of the forwarding address, the Landlord did not return the full security deposit, I find that the Landlord is required to repay double the security deposit plus zero interest in the amount of **\$933.34** (466.67×2). Deducting the amount of **\$356.00** that has already been returned, I find that the Tenant is entitled to the remaining amount of **\$577.34**. As the Tenant's application has been successful, I find that the Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$627.34**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$627.34**. 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: March 13, 2013

Residential Tenancy Branch

