



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, dated January 15, 2013, by the Tenants 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

Are the Tenants entitled to the monetary amounts claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on April 1, 2012 and ended on November 30, 2012. At the outset of the tenancy, the Landlord collected a security deposit from the Tenants in the amount of \$1,050.00. The Tenants orally provided the forwarding address to the Landlord on December 2, 2013 following which the Landlord returned \$500.00 of the security deposit to the Tenants. The Landlord submits that the remainder of the security deposit was retained for damages however the Landlord did not file an application for dispute resolution to make a claim against the security deposit or for any damages. The Landlord states that the Tenant was required to send a forwarding address in writing and to make a request for return of the security deposit and that this was never done.

The Landlord further states that the Tenant did not claim double the security deposit in the application. The Tenant states that return of double the security deposit is not waived.

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. Given that the Landlord sent the Tenant a cheque with a partial return of the security deposit in December 2012, I find that the Landlord had the Tenant's forwarding address in December 2012.

The requirement of a tenant's forwarding address in writing seeks to balance the right of a tenant to the timely return of security monies held and the right of a landlord to make timely claims against the tenant for damages after the tenancy ends. In order to make such claims, the landlord must have the address of the tenant for service purposes. As the Tenant's address for service was also obtained by the Landlord when served with the Tenant's application for dispute resolution, I further find that the Tenant's requirement under section 38 of the Act to provide a forwarding address in writing was substantively met and that the Landlord failed to return the security deposit within 15 days of receipt of the Tenant's application for dispute resolution.

Although the Tenants did not claim an amount equivalent to double the security deposit on the application, at the Hearing the Tenants did not waive the entitlement contained in the Act. Accordingly, I find that the Landlord must return double the security deposit of **\$1,050.00** plus zero interest, less the **\$500.00** already received, in the amount of **\$1,600.00 (\$1,050.00 x 2 – 500.00)**. The Tenants are also entitled to return of the **\$50.00** filing fee for a total entitlement of **\$1,650.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,650.00**. 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: April 29, 2013

Residential Tenancy Branch

