



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 double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing by registered mail on February 14, 2013 in accordance with Section 89 of the Act. The Landlord did not participate in the conference call hearing. The Tenant was 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 April 1, 2012 for a term ending on April 1, 2013. Rent of \$2,100.00 was payable and at the outset of the tenancy the Landlord collected a lump sum of \$2,550.00 informing the Tenant this amount was for a security deposit, pet deposit and two fob deposits. A standard RTB tenancy agreement was signed and in the agreement the Landlord placed the rental unit address as the Landlord’s address. The Parties mutually conducted a move-in inspection and a report was completed

however the Landlord did not send a copy to the Tenant. During the tenancy, the Tenant collected the Landlord's mail that was sent to the unit address and the Landlord would retrieve this mail from the Tenant.

In December 2012 the Landlord offered the Tenant a sum of money to end the tenancy on February 1, 2013. The Landlord informed the Tenant that the unit was being sold and that the Landlord was moving out of the country. The Parties agreed that the Tenant would receive \$1,500.00 for signing an agreement to end the tenancy. On February 6, 2013, the Parties signed an agreement that stated that the Tenant would move out on February 1, 2013 and the Landlord would provide the Tenant with one month's rent. Upon signing the agreement, the Landlord paid the Tenant \$1,500.00 in cash. Although the Landlord told the Tenant that a copy of the agreement would be provided to the Tenant, no copy was ever received by the Tenant and the Landlord did not provide the Tenant with the agreed sum of \$2,100.00 representing one month's rent.

On February 1, 2012 the Tenant moved out of the unit and on the same day the Parties mutually conducted a move-out inspection and signed the report. The Tenant provided her forwarding address on the report. No copy of that report was provided to the Tenant. At the end of the inspection the Landlord gave the Tenant a cheque for \$2,550.00 to return the deposit paid by the Tenant. The Landlord told the Tenant at this point that the Landlord was moving into the unit herself. The \$2,550.00 cheque bounced and on February 9, 2013 the Tenant again sent her forwarding address to the Landlord and requested reimbursement for the cheque. The Landlord has refused to reimburse the Tenant. The Tenant confirmed with the Landlord's employer during the first week of March 2013 that the Landlord lived still lived downtown.

The Tenant claims return of double the \$2,550.00 security deposit in the amount of \$5,100.00. The Tenant claims the month's rent, \$2,100.00 promised in the mutual agreement to end tenancy. The Tenant claims compensation of \$2,100.00 for the Landlord failure to pay the one month's rent as promised in the mutual agreement to

end the tenancy. The Landlord has not made an application for dispute resolution to claim against the security deposit.

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 has not made an application for dispute resolution claiming against the security deposit, and has 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 Tenant double the security deposit in the amount of **\$5,100.00**.

Based on the undisputed evidence of the Tenant that the Landlord failed to pay the one month's rent as promised in the mutual agreement to end the tenancy, I find that the Tenant has substantiated an entitlement to **\$2,100.00**. Although the Tenant claims an additional \$2,100.00, I find that there is no basis under the Act upon which to provide such an entitlement.

As the Tenant's application has been substantially successful, I find that the Tenant is entitled to return of the \$100.00 filing fee for a total entitlement of **\$7,200.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$7,200.00**. 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: May 02, 2013

Residential Tenancy Branch

