



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. The style of cause has been altered to reflect the proper names of the parties.

Both, the tenant and the landlord were represented at today's hearing. Each party acknowledged receiving the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

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

Background and Evidence

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

The tenancy began in July 2004 and ended on February 28, 2013. At the outset of the tenancy the landlord of the day had collected a security deposit of \$2500.00, which was subsequently transferred to the respondent landlord. The parties agree they conducted a mutual *move out* inspection on February 28, 2013. Despite the inspection not being recorded as per the Act the parties each testified the rental unit was left in a satisfactory state and it was agreed the tenant would be returned their security deposit. The parties further agreed that the tenant provided the landlord with a forwarding address prior to vacating the rental unit. The landlord acknowledged being in possession of the tenant's forwarding address prior to the end of the tenancy, on or about February 21, 2013. The

parties agree that the landlord provided the tenant with their original security deposit and a quantum of accrued interest on March 26, 2013 by courier on the same date, in the amount of \$2586.79.

Analysis

On preponderance of the evidence, I have reached a Decision.

Section 38(1) of the Act provides as follows

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.

In this matter the evidence is that the landlord was in possession of the tenant's forwarding address before the tenancy ended on February 28, 2013. I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of the date the tenancy ended 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 returned the security deposit and an amount for interest on March 26, 2013 (\$2586.79). The landlord was obligated under section 38 to return the original amount and any interest by March 15, 2013. Section 38 of the Act prescribes that following March 15, 2013 the landlord was obligated to return to the tenant double the

amount of their security deposit plus accrued interest of \$88.55. The amount which is doubled is the \$2500.00 original amount of the deposit before interest. As a result I find the tenant has established an entitlement claim for **\$5088.55**; *from which I deduct the amount of \$2586.79 already received by the tenant.* The tenant is further entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$2601.76**.

Tenant's entitlement	\$5088.55
Filing Fees for the cost of this application	100.00
Minus amount returned by landlord	-\$2586.79
Total Monetary Award to tenant	\$2601.76

Conclusion

I grant the tenant an order under section 67 for the sum of **\$2601.76**. *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: June 18, 2013