



Dispute Resolution Services

Page: 1

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 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for and the following Order:

1. An Order for return of double the security deposit - Section 38.

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 the monetary amounts claimed?

Background and Evidence

The tenancy began in January or February 2012 and ended on September 30, 2012. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$600.00. The Landlord returned the security deposit in full in February 2013.

The Tenant states that the forwarding address was provided to the Landlord in August or September 2012 by email but cannot recall the exact date. The Landlord states that the Tenant did not provide a forwarding address until October 10, 2012. The Landlord states that an application to retain the security deposit for damages to the unit was made on October 24, 2012 however the Landlord did not attend the Hearing on January 24, 2013 due to work. Due to this absence, the Landlord’s application was dismissed

and the Landlord states that she mailed the Tenant the returned security deposit on February 3, 2013. The Tenant states that she received the returned amount on February 18, 2013.

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. Although the Landlord made an application for dispute resolution claiming against the security deposit within 15 days of the end of the tenancy, the Landlord did not attend the hearing to advance any evidence or argument that the application was validly made and the application was dismissed. The result of the failure of the Landlord to attend the hearing resulted only in a significant delay in returning the security deposit to the Tenant.

In my view, the Act does not contemplate allowing a mere formality of making an application to meet the substantive requirements of a Landlord in claiming against the security deposit. As such I find that the Landlord did not make an application for dispute resolution to claim against the security deposit, as contemplated under the Act, and that the Tenant is therefore entitled to return of double the security deposit of \$1,200.00. Deducting the \$600.00 already received, I find that the Landlord owes the Tenant the remaining \$600.00.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for **\$600.00**. 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: June 28, 2013

Residential Tenancy Branch

