



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was convened in response to an application by the tenant under the Residential Tenancy Act (the Act) for a Monetary Order for the return of the security deposit and compensation of double the amount as per Section 38 of the Act.

Both tenant and landlord were represented at today's hearing and each was provided opportunity to resolve their dispute, provide relevant prior submissions of evidence. Each provided affirmed testimony in respect to the merits of this application.

Issue(s) to be Decided

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

Background and Evidence

The undisputed relevant facts before me under affirmed testimony by both parties, are as follows.

The tenancy began on February 01, 2013 and ended on April 30, 2013. The parties agree they entered into a written tenancy agreement between them for rent of \$500.00 per month. The landlord further collected a security deposit of \$310.00 from the applicant at the outset of the tenancy, which the landlord retains in trust. The landlord testified that on May 22, 2013 they received, and were in possession of, the tenant's request for the return of their deposit and the tenant's forwarding address which they

received by e-mail from the tenant. The parties testified that e-mail and text messaging were the principal mode of communication between them.

Analysis

On preponderance of the relevant evidence and on the balance of probabilities, I have reached a decision.

I accept the parties' testimony that e-mail and text message communication was their primary mode of communication, and as a result, I find that either communication is the same as in writing.

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.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing 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 currently holds a security deposit of \$310.00 and was obligated under Section 38 to return this amount. The amount which is *doubled* is the \$310.00 original amount of the deposit. No interest applies. As a result I find the tenant has established an entitlement of **\$620.00**.

Conclusion

I grant the tenant an Order under Section 67 for the amount of **\$620.00**. 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: October 15, 2013

Residential Tenancy Branch

