



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 made on October 16, 2012³ under the Residential Tenancy Act (the Act) for the return of their security deposit and compensation under the Act. Some documentary evidence has been submitted by the parties prior to the hearing which each acknowledge receiving and which I have reviewed. Both parties attended the conference call hearing and were provided opportunity to mutually settle their dispute, and give oral testimony. 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 the monetary amount claimed?

Background and Evidence

The undisputed facts before me are as follows.

The tenancy began on January 01, 2013 and ended on August 31, 2013. The landlord collected a security deposit of \$380.00 at the outset of the tenancy and retains it in trust. There was a move in inspection conducted at the outset of the tenancy but it was not recorded in the form of a condition inspection report or other means. There was no move out inspection conducted at the end of the tenancy. The parties disagree on the efforts made by one another in respect to conducting an inspection; however, it was highlighted to the parties in this hearing that the landlord bears the responsibility to make certain efforts toward achieving a mutual inspection.

The tenant testified that on September 23, 2013 they sent the landlord their written forwarding address; and, the landlord testified that on September 29, 2013 they were in possession of the tenant's forwarding address in writing.

Analysis

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

In respect to the landlord's requirement at the start of the tenancy, **Section 24(2)(c)** of the Residential Tenancy Act states:

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Since the landlords have not met the burden of proving that a condition inspection report was done, it is my finding that the landlord's right to claim against the security deposit for damages was / has been extinguished. More specifically and more relevant in this matter, is that 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 received the tenant's forwarding address in writing on September 29, 2013 and 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 \$380.00 and was obligated under section 38 to return this amount. The amount which is *doubled* is the \$380.00 original amount of the deposit. No interest applies. As a result I find the tenant has established an entitlement claim for **\$760.00**

Conclusion

I grant the tenant an order under Section 67 for the sum of **\$760.00**. 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: January 27, 2014

Residential Tenancy Branch

