



Dispute Resolution Services

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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 Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38;
2. A Monetary Order for compensation – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed evidence: The tenancy began on January 1, 2009 and ended on or about March 4, 2014 following the provision of a two month notice to end tenancy for landlord’s use (the “Notice”). At the outset of the tenancy, the Landlord collected a security deposit from the Tenants in the amount of \$900.00. The Parties mutually conducted a move-in inspection. The Tenant provided its forwarding address to the Landlord on March 17, 2014. The Landlord has not returned the security deposit and did not make a application to claim against the security deposit.

The Tenant states that no move-out inspection was offered by the Landlord. The Landlord states that the Parties did a move-out inspection when the Tenants returned the keys but that no inspection report was completed. The Landlord states that the Tenants left the unit with damages. The Landlord states that although the Tenants were given the Notice they moved out earlier than the effective date of the Notice. It is noted that the reason for the Notice is that the unit was sold. The Landlord states the unit was listed but not sold at the time of the Notice and was not thereafter listed for a brief period. The Landlord states that the unit was listed again and sold at the end of June 2014.

The Tenant claims return of double the security deposit.

Analysis

Section 35 of the Act requires that at the end of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 36(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. As no move-out inspection report was completed I find that the Landlord's right to claim against the security deposit for damage to the unit is extinguished. The Landlord remains at liberty to make an application for damages to the unit however the security deposit was to have been returned to the Tenant.

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. Based on the undisputed evidence of the Parties, I find that the Tenant has established an entitlement to the return of double the security deposit plus zero interest in the amount of \$1,800.00. As the Tenant has been successful with its application I find that

the Tenant is also entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$1,850.00**. The Tenant is at liberty to make an application in relation to the Notice.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for **\$1,850.00**. 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: July 23, 2014

Residential Tenancy Branch

