



Dispute Resolution Services

Page: 1

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 under section 38. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

I accept the tenant's evidence that despite the landlord and the landlord's agent having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) neither the landlord nor their agent participated in the conference call hearing. The tenant provided proof of registered mail service into evidence along with the tracking numbers for same. The tenant acknowledged sending the landlord their evidence. The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to the return of their security deposit, and in what amount?
Is the tenant entitled to recover their filing fee?

Background and Evidence

The undisputed facts before me, as provided by the tenant, are as follows.

The tenancy began on July 18, 2012 as a 1 year fixed term tenancy ending July 17, 2013 ending on the end date. The landlord originally collected a security deposit of \$840.00 at the outset of the tenancy, which the landlord retains in trust. The tenant testified, and it must be noted, that during the tenancy period, the original tenant sublet the unit to the end of the fixed term, with the landlord's consent. The original tenant entered into a tenancy agreement with the sublet party, ending on the day which ended the original fixed term, and the landlord then immediately re-entered into a new tenancy agreement with the sublet party. The applicant tenant testified they had collected and subsequently returned a security deposit to the sublet party. Effectively, the applicant claims that the landlord still retains the applicant's original security deposit. The tenant provided an abundance of e-mail correspondence with the agent of the landlord, which the tenant claims was their primary method of communication with the landlord. The agent communicated with the tenant that the landlord was either out of country or unavailable when the tenant would e-mail the agent. None the less, on June 17, 2013, the tenant provided e-mail correspondence to the landlord's agent notifying the landlord that the end of the fixed term lease was approaching and also provided the landlord their forwarding address. The landlord communicated that they would not be returning the security deposit because the tenant had "broke the lease", and a series of e-mail communication resulted in attempts to resolve the dispute. The tenant testified that, during the full term of the lease, the landlord was provided valid post-dated cheques; and, at no time did the tenant default on the payment of rent, nor did the landlord suffer a loss of revenue as a result of the sublet arrangement.

Analysis

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

Section 38(1) of the Act provides as follows (**emphasis for ease**)

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 accept that in this tenancy *e-mail communication* was the primary method of worded communication between the parties and therefore I find that, for this tenancy, e-mail communication and written communication as prescribed by Section 39(1)(b) are the same. As a result, I find that the landlord failed to repay the security deposit in full, 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 (emphasis added):

- 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 \$840.00 and was obligated under Section 38 to return this amount. The amount which is *doubled* is the \$840.00 original amount of the deposit, with no applicable interest. As a result I find the tenant has established an entitlement claim for **\$1680.00** and is further entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$1730.00**.

Conclusion

I grant the tenant an Order under Section 67 for the sum of **\$1730.00**. 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: June 10, 2014

Residential Tenancy Branch

