



Dispute Resolution Services

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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 and compensation under Section 38. The application is inclusive of an application for recovery of the filing fee for this application.

Both, the tenant and the landlord were represented at today's hearing. Both parties submitted late evidence to this matter, although each testified they failed to provide their evidence to the other. As a result, I determined their evidence inadmissible. None the less, the parties were permitted to present any relevant evidence in testimony. The parties were also provided opportunity to discuss their dispute with a view to settling all matters, but were unable to agree. The hearing proceeded on the merits of the tenant's application. The parties were apprised that despite all of their testimony, only relevant evidence to the claim would be considered.

Issue(s) to be Decided

Is the tenant entitled to double the monetary amounts claimed?

Background and Evidence

The undisputed relevant facts of the parties before me are as follows.

The tenancy began February 01, 2013 as a fixed term tenancy for 1 year ending January 31, 2014. Rent was \$1650.00 payable in advance on the 1st. of every month.

The landlord collected a security deposit of \$825.00 at the outset of the tenancy, which they retain in trust. The tenancy ended earlier than contracted when the tenant determined to vacate October 31, 2013. The landlord testified that on October 31, 2013, he received the tenant's forwarding address in writing. The parties did not agree as to the administration of the security deposit at the end of the tenancy. The tenant requested its return, and the landlord determined to retain the security deposit in lieu of unpaid rent / loss of revenue.

Analysis

On preponderance of the relevant evidence for this matter, I have reached a decision.

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

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 on October 31, 2014 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 \$825.00 and was obligated under Section 38 to return this amount. The amount which is doubled is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$1650.00 and is further entitled to recovery of the 50.00 filing fee for a total entitlement of **\$1700.00**.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$1700.00**. 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 11, 2014

Residential Tenancy Branch

