



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 of the *Residential Tenancy Act* (the Act), as well as to recover their mailing costs. 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. The landlord acknowledged receiving the Application and Notice of Hearing package in mid-October 2014. The parties acknowledged receiving the evidence of the other and permitted to present any relevant 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.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed *relevant* facts of the parties before me are as follows. The tenancy began October 01, 2009 ending August 31, 2014. Rent was \$1500.00 per month. The landlord collected a security deposit and a pet damage deposit in the sum of \$1500.00 (the deposit), of which they retain \$200.00 in trust. The parties conducted move in and move out inspections as prescribed by the Act. Contrary to the copy of the Condition

Inspection Report, the parties agree that the move out inspection was conducted August 06, 2014 and the landlord provided into evidence that they received the tenant's forwarding address on the same date.

The following is in dispute. The tenant testified that they did not receive a copy of the Condition Inspection Report until October 29, 2014. The landlord claims they sent it to the tenant on earlier dates. The landlord claims the tenant acknowledged and agreed to a deduction from the deposit, and they claim this is reflected on the Condition Inspection Report at section **Z.2**. The tenant acknowledges they signed at section **Z.1**. of the Condition Inspection Report, however disputes they signed the Report at section **Z.2**., in acknowledgment of a deduction from their deposit of \$950.00, and that the particulars and signature in this respect are not of their hand and were not agreed. The parties did agree that an abundance of communication occurred subsequent to the inspection toward the full return of the deposit, although the parties' evidence is that ultimately they did not mutually agree as to the administration of the deposit and the landlord determined to retain \$200.00 of the original deposit and returned \$1300.00 by September 06, 2014. The tenant requests the return of the remaining \$200.00 and the landlord claims they acted in good faith in only retaining the amount in dispute.

Analysis

On preponderance of *the relevant* evidence for this matter I have reached a Decision.

During the hearing the tenant was apprised that their application for mailing costs is not a compensable claim. Other than the cost of filing an application for dispute resolution, all other costs are discretionary litigation expenses for which each party is responsible for their own costs. As a result, this portion of the tenant's claim **is dismissed**.

I find that neither party aptly explained how the particulars within section **Z.2**. of the Condition Inspection Report occurred. What is clear is that section **Z.2**. is incomplete and undated; and, that ultimately the landlord did not rely on the monetary amount stated; and, that neither party agreed as to what eventual amount, if any, should be stipulated on the report as a deduction from the deposit. As a result, I find this

information unreliable, therefore I assign insignificant evidentiary weight to the particulars of section **Z.2.**, and I do not prefer one parties' evidence over the other.

However, and moreover, Section **38(1)** of the Act does provide as follows (**emphasis mine**);

Section 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 in full, or to make an application for dispute resolution within 15 days of the tenancy ending on August 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 deposit of \$200.00. In the absence of agreement by the parties as to the administration of the deposit and in the absence of an application claiming against the deposit the landlord was obligated under Section 38 to return this amount. The amount which is *doubled* is the \$200.00 amount of the deposit which was not returned within the 15 days as prescribed by the Act. As a result I find the tenant

has established an entitlement claim for \$400.00 and is further entitled to recovery of the \$50.00 filing fee for a total award of **\$450.00**.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$450.00**. 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: April 29, 2015

Residential Tenancy Branch

