



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant, orally amended by the tenant within this hearing, seeking solely the return of the security deposit and compensation under Section 38, and recovery of the filing fee for this application.

Both, the tenant and the landlord attended today's hearing. The landlord acknowledged receiving the tenant's application and all evidence in November 2014. The parties were further 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, to no avail.

The landlord testified they filed a late application - July 02, 2015 - claiming damages to the rental unit. That application is not before me or this matter. The tenant claims they have not received anything respecting the landlord's application. Given the late date of the landlord's application 3 days before this hearing, the landlord clearly did not make their application pursuant to the Rules of Procedure for filing a cross claim to the tenant's application, and therefore the landlord's claim on application for *damage to the unit* must remain the subject of its assigned future hearing date in September 2015.

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 originally began June 01, 2013 and ended October 01, 2014. Rent was \$1650.00 payable in advance on the 1st of every month. The landlord collected a security deposit of \$700.00 at the outset of the tenancy, which they retain in trust. The landlord testified that on October 02, 2014 they personally 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 satisfaction of purported damage to the unit claimed to be beyond reasonable wear and tear.

Analysis

On preponderance of the relevant evidence for this matter;

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

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 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 02, 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 \$700.00 and was obligated under Section 38 to return this amount if they determined not to seek it's retention through Dispute Resolution. 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 \$1400.00 and is further entitled to recovery of the 50.00 filing fee for a total entitlement of **\$1450.00**.

Conclusion

The tenant's application is granted.

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$1450.00**. 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: July 06, 2015

Residential Tenancy Branch

