



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. The landlord submitted evidence to this matter, the tenant did not. None the less, both 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 did not agree. The hearing proceeded on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to monetary amounts claimed?

Background and Evidence

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

The tenancy began January 01, 2011. Rent was \$1600.00 payable in advance on the 1st of every month. The landlord collected a security deposit of \$800.00 at the outset of the tenancy, which they retain in trust. The tenancy ended July 01, 2014. The landlord testified that "on or near the end of July 2014" they received the tenant's forwarding address in writing – and they provided the tenant's written request for their deposit, along with their forwarding address, within their evidence package. The parties did not agree as to the administration of the security deposit at the end of the tenancy. The

tenant requested its return in writing, and the landlord determined to retain the security deposit in lieu of purported damages to the unit – with which the tenant disagrees.

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 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 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 or near the end of July 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 \$800.00 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 \$1600.00 and is further entitled to recovery of the 50.00 filing fee for a total entitlement of **\$1650.00**.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$1650.00**. 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 13, 2015

Residential Tenancy Branch

