Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>   MNSD, MNDC, FF

<u>Introduction</u>

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1.   Monetary Order for compensation - Section 67;
2.   An Order for the return of the security deposit - Section 38; and
3.   An Order to recover the filing fee for this application - Section 72.

I accept the Tenant's evidence that the Landlord was served with the application for dispute resolution and notice of hearing in person in accordance with Section 89 of the Act. The Landlord did not attend. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

<u>Preliminary Matter</u>

The person appearing for the Landlord stated that the Landlord told her he was out of town and asked her to attend the hearing and give Witness evidence about the state of the unit at the end of the tenancy. As this evidence is not relevant to the Tenant's claims I informed the person that such evidence would not be heard.

<u>Issue(s) to be Decided</u>

Has the Landlord's right to claim against the security deposit been extinguished?
Is the Tenant entitled to receive double the security deposit from the Landlord?

Background and Evidence

The tenancy stared on December 1, 2013. At the outset of the tenancy the Landlord collected $400.00 as a security deposit. No move-in condition inspection was offered by the Landlord nor was a condition report completed by the Landlord with a copy provided to the Tenant. Although the Tenant moved out of the unit on July 9, 2015, the keys to the unit were returned to the Landlord on July 14, 2015. The Tenant provided its forwarding address in writing on July 14, 2015. The Landlord has not returned the security deposit.

Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Based on the undisputed evidence that no move-in inspection was offered by the Landlord or no condition inspection report was completed for the move-in inspection I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord's right to claim against the security deposit was extinguished at move-in the only option for the Landlord in relation to the security deposit was to return it in full to the Tenant. As the Landlord has not done this I find that the Landlord must now pay the Tenant double the security deposit plus zero interest in the amount of **$800.00**. The Landlord remains at liberty to pursue any claims it may have against the Tenant.

As the Tenant has been successful with its claim I find that the Tenant is also entitled to recovery of the **$50.00** filing fee for a total entitlement of **$850.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$850.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: January 21, 2016

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Residential Tenancy Branch