



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; her agent; the landlord and his agent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began approximately 14 years ago and ended on June 29, 2015. The parties also agreed the rent at the end of the tenancy the rent was \$1,450.00 due on the 1st of each month with a security deposit of \$600.00 paid.

The parties agreed the tenant provided her forwarding address in writing during the first week of July 2015 and that the landlord has not returned any portion of the deposit to the tenant.

The parties did indicate that the tenant had agreed to allow the landlord to retain a portion of the deposit and the tenant sought return of \$519.06 which includes interest on the deposit.

Analysis

Section 38(4)(a) of the *Act* states a landlord may retain an amount from a security deposit or a pet damage deposit if the tenant, at the end of the tenancy, agrees in writing the landlord may retain that amount to pay a liability or obligation of the tenant. Section 38(5) states that the landlord's right to retain an amount under Section 39(4)(a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against the security deposit has been extinguished under Section 24(2) or 36(2).

Section 36(2) of the *Act* requires the landlord to complete a move out condition inspection and provide a written Condition Inspection Report within the time frame outlined in Section 18 of the Residential Tenancy Regulation and in accordance with the content and form outlined in Sections 19 and 20 of the Regulation.

As the landlord has not provided the tenant with a copy of a Condition Inspection report but only provided a listing of costs I find the landlord has failed in his obligations and has extinguished his right to retain any portion of the deposit by agreement of the tenant. As such, I find the landlord must return the full deposit plus interest.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

In addition, if the landlord received the tenant's forwarding address on the last day of the first week of July 2015 (July 10, 2015) then the landlord had until July 25, 2015 to file an Application for Dispute Resolution to claim against the deposit. As the landlord has not yet filed such a claim, I find the landlord has failed to comply with the requirements under Section 38(1) and the tenant is entitled to double the amount of the deposit, pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,283.76** comprised of \$1,200.00 double the amount of the security deposit; \$33.76 interest and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 12, 2016

Residential Tenancy Branch

