



Dispute Resolution Services

Page: 1

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 pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

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

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Relevant Background and Evidence

The tenancy began on November 15, 2010. Rent of \$1,350.00 was payable monthly. At the outset of the tenancy the Landlord collected \$675.00 as a security deposit and \$300.00 as a utility deposit. Although a move-in condition inspection was conducted no condition report was prepared by the Landlord. The Landlord has not returned the deposits and has not made an application to claim against the deposit.

The Tenant states that she moved out of the unit on November 1, 2014 and on November 2, 2014 the Tenant met with the Landlord to return the keys to the unit. The Tenant states that she gave her forwarding address to the Landlord in person at this time. The Tenant provides copies of emails to the Landlord on November 1 and 2, 2014 and photos of the Landlord that the Tenant states were taken on November 2, 2014 while at the unit. The Tenant states that she also sent the forwarding address to both the Landlord's address contained on the tenancy agreement and to the rental unit address. The Tenant states that the forwarding address is known by the Landlord and that the Landlord can see the Tenant's house from her own place it is so nearby. The Tenant claims return of double the security deposit.

The Landlord states that the Tenant did not move out until November 12, 2014 and that no forwarding address was ever given to the Landlord in person by the Tenant. The Landlord states that the Tenant sent materials to the address where there are now tenants and that these tenants called the Landlord to come and pick up these materials. The Landlord states that she was surprised to receive the Tenant's materials at that time in June 2016 and that this was the date of receipt of the Tenant's forwarding address.

Analysis

Section 20 of the Act provides that a landlord must not require or accept more than one security deposit in respect of a tenancy agreement. As the Landlord took a deposit to secure the utilities in addition to the security deposit and as the Landlord was prohibited from taking an extra security deposit I consider the utility deposit to form part of the security deposit. I find therefore that the Tenant paid a total of \$975.00 as a security deposit.

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.

Overall I did not find the Landlord's evidence to be credible. I note that the Landlord was initially evasive in giving evidence about the utility deposit and the Landlord's denial of receipt of the forwarding address at move-out did not hold a "ring of truth". As a result and given the Tenant's electronic communication evidence I prefer the Tenant's evidence and find that the tenancy ended on November 1, 2014 with the Tenant's forwarding address provided to the Landlord on November 2, 2014. As the Landlord did not return the security deposit to the Tenant and did not make any application to claim against the security deposit I find that the Landlord must now pay the Tenant double the security deposit in the total amount of **\$1,950.00**. As the Tenant has been successful with the application I find that the Tenant is also entitled to return of the **\$50.00** filing fee for a total entitlement of **\$2,000.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for **\$2,000.00**. 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 Act.

Dated: August 03, 2016

Residential Tenancy Branch