



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 and pet damage deposits 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. Solely the tenant submitted evidence to this matter and the landlord acknowledged receiving it pursuant to the Rules and Procedures within the month of February 2015. The 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, to no avail. 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 began July 01, 2014 as a fixed term tenancy for 5 months and then reverting to a month to month tenancy ending October 28, 2015. The agreed rent was \$3500.00 payable in advance on the 1st. of every month. The landlord collected a security deposit and a pet damage deposit at the outset of the tenancy in the respective

amounts of \$1500.00 for a total of \$3000.00, which they retain in trust. At the start and end of the tenancy the landlord did not conduct a condition inspection of the unit with the tenant in accordance with the Act. None the less, the parties did not agree as to the administration of the deposits at the end of the tenancy. The tenant requested its return, and the landlord determined to retain the deposits because of purported damage to the unit. The landlord testified that on or about January 20, 2016 they received the tenant's forwarding address in writing by letter requesting the return of both deposits.

Analysis

On preponderance of the relevant document and testimonial evidence for this matter, I find as follows.

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 about January 20, 2016 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 both deposits totalling \$3000.00 and was obligated under Section 38 to return this amount. The amount which is doubled is the original amount of the deposits. As a result I find the tenant has established an entitlement claim for \$6000.00 and is further entitled to recovery of the filing fee for a total entitlement of **\$6100.00.**

The parties were apprised that it remains available to the landlord to file an application for dispute resolution.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$6100.00.** 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: August 29, 2016

Residential Tenancy Branch