



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 under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on October 1, 2014 and ended on September 30, 2015. At the outset of the tenancy, the Landlord collected a security deposit of \$1,150.00. No move-in inspection was completed between the Landlord and Tenant. No move-out report was completed by the Landlord. The Tenant provided its forwarding address in writing to the Landlord on October 4, 2015. The Landlord did not return the security deposit to the Tenants. Although the Landlord filed an application for dispute resolution to claim against the security deposit for damages to the unit, the application was dismissed.

Analysis

Section 23 of the Act requires that at the start of a tenancy, a landlord and tenant must together inspect the condition of the rental unit and the Landlord must complete a condition inspection report in accordance with the regulations. Section 24(2) of the Act 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 and report was completed I find that the Landlord's right to claim against the security deposit was extinguished at the onset of the tenancy. As a result, although the Landlord could still make a claim for damages to the unit, the Landlord had no right to retain the security deposit pending that claim.

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 the onset of the tenancy, and as the Landlord did not return the security deposit within 15 days receipt of the forwarding address I find that the Landlord must now pay the Tenant double the security deposit in the amount of **\$2,300.00**. As the Tenant's application has met with success I find that the Tenant is also entitled to return of the **\$100.00** filing fee for a total entitlement of **\$2,400.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for **\$2,400.00**. 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: September 06, 2016

Residential Tenancy Branch