



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 landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for authorization to retain the tenant's security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant and landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed receipt of the landlord's application for dispute resolution package.

The tenant confirmed that he did not provide any documentary evidence for this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the application.

Issue(s) to be Decided

Is the landlord authorized to retain the tenant's security deposit?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the testimony of the parties, the tenancy began on October 1, 2012 on a fixed term until September 30, 2013 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,800.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$900.00 at the start of the tenancy. The tenant vacated the rental unit on May 31, 2016.

The landlord is seeking to retain the security deposit in the amount of \$900.00 to offset damages to the rental unit. The parties agreed that a written move-in condition inspection report was completed at move-in but a copy never given to the tenants. The landlord does not have copy of the move-in inspection report and thus did not provide a

copy for this hearing. The parties agreed that the landlord conducted the move-out inspection report in the tenant's absence on May 31, 2016.

The parties agreed the forwarding address was provided to the landlord in writing on June 6, 2016.

Analysis

When a landlord fails to properly complete a condition inspection report or give a copy to the tenant, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did provide a copy of the condition inspection reports, she lost her right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The landlord received the tenant's forwarding address on June 6, 2016 but did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and she failed to return the tenant's security deposit within 15 days of having received his forwarding address, section 38 of the *Act* requires that the landlord pay the tenant double the amount of the deposit.

This finding does not preclude the landlord's right under section 67 of the *Act*, to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The landlord has extinguished her right to retain the security deposit and is not authorized to retain the security deposit.

I issue a monetary order in the amount of \$1,800.00 to the tenant for the security deposit.

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: December 23, 2016

Residential Tenancy Branch