



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

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

The Landlords did not attend the hearing. I accept the Tenant’s evidence that on March 13, 2017 each Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail in accordance with Section 89 of the Act. The Tenant provided postal evidence of the tracking numbers for each registered mail package. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlords are deemed to have received the Materials on March 18, 2017. The Tenant was given full opportunity 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 started on November 1, 2016 for a fixed term to end June 15, 2017. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit. The Parties mutually conducted a move-in inspection. On December 13, 2016 the Tenant gave the Landlord notice to end the tenancy for February 28, 2017. The Tenant moved out of the unit on January 28, 2017. On January 30, 2017 the Parties mutually conducted a move-out inspection, the Tenant agreed to a deduction of \$175.00 from the security deposit for minor wall damage and cleaning, and the Landlord agreed to return the remaining \$625.00 of the security deposit to the Tenant. On that same day the Parties also signed a mutual agreement to end the tenancy for February 28, 2017 and the Tenant provided its forwarding address in writing. The Tenant paid the rent for February 2017.

The Landlord has not returned the security deposit and has not made an application to claim against the security deposit. The Tenant does not waive any entitlement under the Act for the return of double the security deposit. The Tenant requests that the previously agreed amount of \$175.00 be deducted from its entitlement.

Analysis

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. Based on the undisputed evidence of the Tenant I find that the Landlord failed to return the security deposit or make an application to claim against the security and as a result must now pay the Tenant double the security deposit plus zero interest in the amount of **\$1,600.00**. As the Tenant has been successful with its application I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,700.00**.

Deducting the agreed amount of **\$175.00** from this entitlement leaves **\$1,525.00** owed by the Landlord to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,525.00**. 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: August 16, 2017

Residential Tenancy Branch