



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened in response to an application by the Tenant for return of the security deposit pursuant to section 38 of the *Residential Tenancy Act* (the “Act”).

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

Preliminary Matter

The Landlord states that it attempted to give its evidence package to the Tenant on December 8, 2017 but it was refused. The Landlord states that it gave the Residential Tenancy Branch (the “RTB”) its evidence package on December 11, 2017. The Landlord states that it received the Tenant’s application in June 2017 and has no reason for not providing the package earlier to either the Tenant or the RTB.

Rule 3.15 of the RTB Rules of Procedure provides that a respondent’s evidence must be received by the applicant and the RTB as soon as possible and not less than seven days before the hearing. Given the undisputed evidence that the Landlord received the Tenant’s application in June 23, 2017 and did not provide its evidence package in response until several months later and as the Landlord provides no evidence why the package could not be provided earlier, I consider that the Landlord did not provide the package as soon as possible. Given the significant delay and considering that the Landlord did not ultimately provide its evidence package to the Tenant within 7 days of

the hearing I find that to consider the package would significantly prejudice the Tenant and I therefore decline to consider the Landlord's evidence package. The Landlord may provide relevant oral evidence or submissions in response to the Tenant's claim.

The Landlord states that the unit is occupied by their daughter who shared the kitchen and bathroom with the Tenant. The Landlord states that their daughter is not the owner and that they are the owners. The Landlord argues that an owner includes a close family member of the owner and that the Act therefore does not apply to the dispute.

Section 4(c) of the Act provides that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. The Act does not define owner. Based on the Landlord's evidence that their daughter is not an owner of the unit and as the Act does not define owner as including a close family member, I find that the Act applies to the dispute.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Background and Evidence

The following are undisputed facts: The tenancy started on September 1, 2016 and ended on April 30, 2017. The Parties did not mutually conduct a move-in inspection. Rent of \$500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$250.00 as a security deposit. On May 14, 2017 the Tenant provided its forwarding address to the Landlord. On May 17, 2017 the Landlord returned only \$80.00 to the Tenant. The Tenant did not provide any written authority for the Landlord to retain any amount of the security deposit and the Landlord did not make an application to claim against the security deposit.

The Tenant claims return of the security deposit.

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 that the Landlord did not return the full security deposit, did not make an application to retain the security deposit, and had no written authority from the Tenant to retain any amount of the security deposit I find that the Landlord must now return double the security deposit plus zero interest of **\$500.00** to the Tenant. Deducting the **\$80.00** already returned leaves **\$420.00** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$420.00**. 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: December 11, 2017

Residential Tenancy Branch