



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. An Order for the 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 Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord required to pay the Tenant double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy, under written agreement, started in May 2015 and ended on January 31, 2018. Rent of \$1,995.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$997.50 as a security deposit. The Landlord received the Tenant’s forwarding address on March 1, 2018. The Parties mutually conducted a move-in inspection with a report completed. The Landlord did not return the security deposit and did not make an application claiming against the security deposit for damage to the unit.

The Tenant does not recall receiving a copy of the move-inspection. The Landlord states that a copy was provided to the Tenant. It is noted that no copy of any inspection report was provided by the Landlord for the hearing.

The Tenant states that the Parties mutually conducted a move-out inspection however no report was completed and provided to the Tenant. The Landlord states that 5 minutes after the move-out inspection started the Tenant informed the Landlord that he had to leave. The Landlord states that the Landlord asked the Tenant to remain but the Tenant did not. The Landlord states that after the Tenant left the Landlord completed the form but did not provide a copy to the Tenant.

The Tenant states that the inspection was 30 to 45 minutes long and that all of the rooms were inspected even though it was so dark the Landlord was using a phone flashlight. The Tenant states that after the Landlord complained about the bathroom the Parties left to inspect the car park and storage area. The Tenant states that the Landlord informed the Tenant at the move-out inspection that the biggest concern was with damage to the bathroom cupboard and that the Landlord did not know what caused the spots on the bathroom ceiling. The Tenant states that the Landlord informed the Tenant that the Landlord would have to look into the costs for repairs and would let the Tenant know if any portion of the security deposit would be returned. The Tenant states that the Landlord never contacted the Tenant after this. The Landlord agrees that the only issue was with the bathroom. The Landlord states that the Tenant was in a hurry to leave and did not sign the move-out report. The Landlord also states that as the report was not completed the Tenant told the Landlord to complete it alone.

The Tenant claims return of double the security deposit. The Landlord states that the Tenant left the unit with damages.

Analysis

Section 36(1) of the Act provides that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has offered at least two opportunities for an inspection and the tenant has not participated on either occasion. Although it appears that the Landlord's evidence is that the Tenant left before the inspection was completed, the Landlord's evidence also appears only to support that the Tenant did not stay for the written report to be completed. Given the Tenant's detailed description of the move-out inspection, I prefer the Tenant's evidence of the inspection and find on a balance of probabilities that the Tenant did participate in an inspection of the unit. As such I find that the Tenant's right to return of the security deposit was not extinguished by the Tenant's failure to participate in the move-out inspection.

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 agreed facts that the Tenant's forwarding address was provided to the Landlord and that the Landlord neither returned the deposit or made an application for dispute resolution claiming against the deposit I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$1,995.00**.

As the Tenant has been successful with its claim I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,095.00**. The Landlord remains at liberty to make an application for dispute resolution in relation to any claims it may have against the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,095.00**. 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: July 31, 2018

Residential Tenancy Branch