



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC (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 compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on January 23, 2018 in accordance with Section 89 of the Act. 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 Landlord is deemed to have received the Materials on January 28, 2018. 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

On November 8, 2017 the Tenant paid the Landlord a deposit of \$500.00 to rent a lower unit for a tenancy start date of December 1, 2017 with monthly rent payable of

\$1,000.00. The Landlord lives in the upper unit of the house containing the lower unit. The Landlord gave the Tenant a handwritten receipt for the payment of the security deposit and mistakenly put the date of receipt as October 8, 2017. The Tenant provides a copy of this receipt as evidence. On November 11, 2017 the Tenant informed the Landlord that he would not be moving into the unit and requested return of the deposit. On December 20, 2017 the Tenant sent a letter dated December 18, 2017 by registered mail to the Landlord providing the Landlord with the Tenant's address for the return of the security deposit. The Tenant provides a copy of this letter as evidence. The Landlord has not returned the security deposit and has not made an application for dispute resolution to claim against the security deposit. The Tenant does not waive any entitlement to return of double the security deposit.

Analysis

Section 6(1) of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Based on the undisputed evidence of the payment of the security deposit of \$500.00 with the amount of rent and a tenancy start date being agreed upon, I find that the Parties entered into a tenancy agreement that brings the Parties under the provisions of the Act.

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 Tenant's undisputed evidence I find that the Tenant ended the tenancy on November 11, 2017 and provided its forwarding address to the Landlord when it mailed the letter containing the Tenant's address on December 20, 2018. As the Landlord neither returned the security deposit nor made an application claiming against the security deposit I find that the Landlord must now pay the Tenant double the security

deposit plus zero interest of **\$1,000.00**. As the Tenant's claim has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,100.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,100.00**. 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 23, 2018

Residential Tenancy Branch