



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL, MNDCL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

Landlord:

- a monetary order for damages pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call.

The landlord did not attend this hearing, although I waited until 1:45 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord should have been aware of the hearing date, time and call in instructions as this dispute was initiated by the landlord and the landlord served a copy of the notice of hearing on the respondent.

The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions in this hearing which proceeded in the absence of the landlord.

Issues

Is the landlord entitled to a monetary order for damages and loss?

Is the landlord entitled to recover the filing fee for this application?

Is the landlord entitled to retain all or a portion of the security deposit? If no,

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Background and Evidence

The tenancy began on June 30, 2021. The tenants vacated the rental unit on October 31, 2021, but the tenancy did not formally end until November 30, 2021. A move-out inspection was conducted on November 28, 2021. No move-in inspection was conducted. The tenant provided a forwarding address to the landlord at the move-out inspection. The tenant paid a security deposit of \$400.00 at the start of the tenancy which the landlord continues to hold.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Although the landlord made an application to retain the deposit, the landlord failed to follow through on that application by attending the hearing and presenting evidence in support of the application. As such, the landlord's application is dismissed in its entirety without leave to reapply.

I find the tenant provided a forwarding address in writing to the landlord during the move out inspection. The forwarding address is not on the move-out inspection form submitted as evidence by the landlord. The tenants' security deposit was not refunded within fifteen days of the end of the tenancy or the date a forwarding address was provided as required by section 38 of the Act. The landlord's right to claim against the deposit was also extinguished as the landlord did not complete a move-in inspection; therefore, the doubling provisions of section 38 apply.

The tenants are granted a monetary award in the amount of \$800.00, which is double the original security deposit of \$400.00.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

Pursuant to section 38 of the *Act*, I grant the tenant a Monetary Order in the amount of \$800.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 18, 2022

Residential Tenancy Branch