Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the amount of the security deposit of $275 and for recovery of the filing fee of $50 for making this application.

Both, the tenant and the landlord were in attendance and were represented in this hearing and each provided testimony under solemn affirmation

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed facts before me are as follows. The tenancy began on September 13, 2008 at which time the tenant and landlord entered into a tenancy agreement for a tenancy start date of October 1, 2008. The landlord collected a security deposit of $275 on September 13, 2008.   On September 17, 2008 the tenant advised the landlord in a voice message that she was cancelling the tenancy and desired her security deposit back. On September 18, she again telephoned the landlord, speaking to the landlord, and advising the landlord that she would not be occupying the rental unit on the agreed date of October 1, 2008. Again on September 20, 2008 the tenant called and requested back her security deposit and the landlord testified that they refused to do so as they had turned prospective renters away since September 13, 2008 and were now not able to obtain alternate tenants to occupy the suite by October 1, 2008.   Later, on September 22 and 23, 2008 the tenant mailed to the landlord, by regular mail and by

registered mail, respectively, a letter to their home requesting return of the security deposit and supplying in writing her forwarding and mailing address. The landlord is deemed to have received the forwarding address after 5 days. The landlord's testimony is that they did not simply ignore the tenant's change of plans and did in fact act on the information that the tenant was not going to occupy the rental unit and re-advertised it but were unable to find new tenants for the month of October, 2008.

Analysis

Section 16 of The Residential Tenancy Act addresses the start of rights and obligations under a tenancy agreement, specifically,

Start of rights and obligations under tenancy agreement

> **16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect <u>from the date the tenancy agreement is entered into</u>, whether or not the tenant ever occupies the rental unit.

Section 38(1) of the Act provides as follows:

> 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> > 38(1)(a) the date the tenancy ends, and
> >
> > 38(1)(b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> > 38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d)   file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore obligated under section 38 to return the deposit, with interest.

Again, it is reiterated that the tenant is not seeking compensation under Section 38(6) for return of double the security deposit.

The landlord currently holds a security deposit of $275 and was obligated under section 38 to return this amount together with **$.17** in interest which had accrued.

I find that the tenant has established a claim for **$275.17**. The tenant is also entitled to recovery of the **$50** filing fee for a total claim of **$325.17**

Conclusion

I grant the tenant an order under section 67 for the sum of **$325.17**. This order may be filed in the Small Claims Court and enforced as an order of that Court, if necessary.

Dated: January 15, 2009