



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 filed on October 29, 2012 for a monetary order for the return of the security deposit and compensation under section 38.

Both, the tenant and the landlord were represented at today's hearing

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed facts before me by both parties are as follows.

The tenancy began on April 01, 2012 and ended on September 01, 2012. The landlord collected a security deposit of \$387.50 at the outset of the tenancy, which the landlord still retains in trust. There was no move in inspection completed at the outset. There was no move out inspection completed at the end of the tenancy. The landlord testified that soon after the tenant vacated they were in possession of the tenant's forwarding address in writing dated September 01, 2012.

Analysis

On preponderance of the evidence I have reached a Decision.

I find that since the landlord did not accomplish the required move in and move out inspections in accordance with the Act, the landlord's right to make a claim against the security deposit were extinguished under the Act. In addition, **Section 38(1)** of the Act provides as follows (**emphasis for ease**).

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

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 to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

- 38(6) If a landlord does not comply with subsection (1), the landlord
 - 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
 - 38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$387.50 and was obligated under section 38 to return this amount within 15 days of receiving the tenant's forwarding address in writing. The amount which is doubled is the \$387.50 original amount of the deposit. As a result I find the tenant has established an entitlement claim for **\$775.00**.

Conclusion

I grant the tenant an Order under section 67 for the sum of **\$775.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 13, 2012

Residential Tenancy Branch