



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mason Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act")

The Tenant applied on June 24, 2014 for:

1. An Order for return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on August 18, 2014 for:

1. A Monetary Order for compensation – Section 67;
2. An Order to retain all or part of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Is the Landlord entitled to the monetary amount claimed?

Background and Evidence

The tenancy started on April 1, 2014 for a fixed term to expire on March 31, 2015. The Tenant gave notice and moved out of the unit on May 31, 2014. Rent of \$975.00 was payable monthly on the first day of each month and at the outset of the tenancy the Landlord collected \$487.00 as a security deposit. The Tenant provided its forwarding

address on May 31, 2014. The Landlord returned \$163.00 of the security deposit to the Tenant.

The Tenant claims return of the security deposit.

The Landlord states that the tenancy agreement provides for liquidated damages of \$324.00 to cover costs of re-renting the unit. The Landlord states that these costs do not include advertising costs but costs for time spent in showing the unit, for credit checks on prospective tenants and to otherwise process the applications of prospective tenants. The Landlord states that the Tenant agreed to pay this amount in a letter dated April 4, 2014 and that the Landlord accepted this offer by way of letter dated April 30, 2014. It is noted that the April 30, 2014 letter indicates that a new tenant was found for June 1, 2014 and that the Tenant would not be responsible for rent from this date forward. The Tenant states that this letter shows that the Landlord did not accept the Tenant's offer to pay the liquidated damages in exchange for an end of the tenancy. The Landlord claims \$324.00.

The Tenant states that the Landlord refused the Tenant's oral request to sublet the unit for the remaining term of the tenancy and further argues that the Landlord cannot charge a fee for giving consent to the sublet as contained in section 16 of the tenancy agreement. The Landlord denies refusing to sublet and states that the Tenant was informed about the approval and showing of the unit procedure.

Analysis

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. As the Landlord did not make an application or return the full security deposit to the Tenant within 15 days of the end of the tenancy, I find that the Landlord must return double the

security deposit in the amount of **\$975.00**. As the Tenant has been successful with its application I find that the Tenant is also entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$1,025.00**. Deducting the **\$163.00** already returned I find that the Landlord owes the remaining **\$862.00** to the Tenant.

Given the lack of anything in writing requesting permission to sublet, I find that the Tenant has not substantiated the Landlord's refusal to sublet. Given the provision in the tenancy agreement for liquidated damages upon ending the fixed term early and considering that the tenancy ended earlier than the fixed term, I find that the Landlord is entitled to the amount of **\$324.00**. As the Landlord has been successful I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$474.00**. Deducting this amount from the **\$862.00** owed to the Tenant leaves **\$388.00** remaining owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$388.00**. 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: November 4, 2014

Residential Tenancy Branch

