



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Creston Valley Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, 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;
2. An Order for the return of the security deposit - Section 38; and
3. An Order for the Landlord to comply - Section 62.

It is noted that Landlord HG clarified that she acted as agent for the owners during the tenancy. Landlord HG, both the owners and the Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Landlords required to pay the Tenant double the security deposit?

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy of a duplex started on January 1, 2016 and ended on July 31, 2016. Rent of \$800.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit and \$400.00 as a pet deposit. The Parties mutually conducted both a move-in and move out condition inspection with reports. The Tenant provided her forwarding address on both August 6 and August 17, 2016. The Landlord did not make an

application to claim against the security deposit and the owners only returned \$595.25 of the combined pet and security deposit to the Tenant.

The Tenant states that she entered into a verbal agreement with the Landlord to maintain the yard of both duplexes for \$100.00 per month. The Tenant states that the other duplex was vacant at the time. The Tenant states that she has no recall of the addendum requiring her to maintain her portion of the yard and that the yards were joined. The Tenant states that there was no maintenance required for the first three months of the tenancy and that the Tenant carried out the maintenance of the entire yard thereafter. The Tenant states that she was paid for April and May 2016 and despite giving the Landlord the bills for June and July 2016 the Landlord failed to pay the agreed monies. The Tenant claims \$200.00.

The Landlord agrees that the yard needed to be maintained for April and May 2016 as the duplex was up for sale but that this amount was only paid for the maintenance of one half of the yard as the tenancy agreement provides that the Tenant was responsible for the Tenant's side. The owners state that no amount of money was agreed upon for the work and that the owners only agreed to come to an agreed amount sometime later. The owners state that they moved into the other side of the duplex sometime in June 2016 and that the Tenant did no work on any of the yard for June and July 2016. The Tenant states that had the Landlord not agreed on an amount to be paid it would not have been done.

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. Based on the undisputed facts that the Landlord did not make an application to retain any amount of the security deposit and did not return the full security deposit to the Tenant in the

time required, I find that the Landlords must now pay the Tenant double the combine security and pet deposit plus zero interest of **\$1,600.00**. Deducting the amount already returned of **\$595.25** leaves **\$1,004.75** owed to the Tenant.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. The owner's evidence of not having agreed to pay any definitive amount to the Tenant for yard maintenance does not hold a ring of truth, particularly in the face of the Tenant having been paid \$200.00 for the work for two months, the duplex being up for sale and the yards being joined. As such I prefer the Tenant's more credible evidence and find that there was an oral agreement that formed part of the tenancy agreement to pay the Tenant \$100.00 per month to maintain both yards simultaneously. As the addendum required the Tenant to maintain her side of the yard, I find that the amount agreed to was for the maintenance of the other side of the yard. Given the preference for the Tenant's evidence I also find that the Tenant has substantiated that the work was carried out for June and July 2016. For these reasons I find on a balance of probabilities that the Tenant has substantiated its claim to **\$200.00** for yard maintenance.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,204.75**. 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: April 05, 2017

Residential Tenancy Branch