



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

Preliminary Matters

The hearing was scheduled for a conference call at 1:00 p.m. on this date. The only participants who called into the hearing at 1:00 p.m. were the Tenants who were ready to proceed. The hearing lasted until 1:15 p.m. During this time the phone system was continuously monitored for the Landlord’s appearance however the Landlord did not appear. As the Landlord failed to attend to pursue its application I dismiss its application without leave to reapply. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Tenants CA and MT noted that the Landlord misspelled their names on the application. The Tenants provided the correct spelling and as there is no prejudice to the Landlord, I amend the application to correct the spelling of these Tenants’ names.

Issue to be Decided

Are the Tenants entitled to return of their security deposit?

Background and Evidence

The tenancy started on November 21, 2016 for a fixed term to end April 30, 2017. Rent of \$2,600.00 was payable in advance on the 31st day of each month. At the outset of the tenancy the Landlord collected \$2,600.00 as a security deposit. The Tenants moved out of the unit on April 17, 2017 and provided their forwarding addresses in writing to the Landlord in person on that date. The Tenants, who are from out of country, had also provided their forwarding addresses for the end of the tenancy at the outset of the tenancy. The Landlord has not returned the security deposit and made its application to claim against the security deposit on June 6, 2017. As noted above this application has been dismissed. The Tenants seek return of the security deposit and do not waive any entitlement to return of double the security deposit.

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. Policy Guideline #17 provides that the security deposit or any portion remaining on the security deposit on the landlord's application to retain all or part of the security deposit will be ordered returned whether or not the tenant has applied for its return. Further unless the tenant has specifically waived the doubling of the deposit, the return of double the deposit will be ordered if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing. As the Landlord's application to retain all or part of the security deposit has been dismissed I find that the Landlord must return the security deposit to the Tenants. Based on the undisputed evidence that the Tenants provided their written forwarding address to the Landlord in person on April 17, 2017 and given that the Landlord did not make its application to claim against the security deposit within 15 days

of that date, I find that the Landlord must now return double the security deposit plus zero interest of **\$5,200.00** to the Tenants forthwith.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$5,200.00**. 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 03, 2017

Residential Tenancy Branch