



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dunowen Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDB-DR, FFT

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

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms its email address as provided in the Tenant’s application.

Preliminary Matter

The Landlord states that the tenancy is not under the Act as it is a licence to occupy the unit.

Section 2(1) of the Act provides that the Act applies to tenancy agreements, rental units and other residential property. Section 1 of the Act defines “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Based on the Landlord’s evidence that the tenancy was a licence to occupy the unit I find that the Act applies.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on January 19, 2018 and ended on June 17, 2019. At the outset of the tenancy the Landlord collected \$2,000.00 as a security deposit and \$500.00 as a pet deposit. On June 18, 2019 the Landlord gave the Tenant \$1,600.00. The Landlord received the Tenant's forwarding address on July 12, 2019. The Landlord did not make an application to claim against the security deposit.

The Tenant states that the \$1,600.00 received from the Landlord was for the Tenant having left the unit early as the Landlord gave the Tenant notice that it was ending the tenancy to sell the unit. The Tenant confirms that the Landlord did not serve a notice to end tenancy for landlord's use on the approved form. The Tenant states that it paid its full rent for June 2019. The Landlord states that the Tenant did not pay any rent for June 2019 and that the Landlord returned the Tenant the \$1,600.00 as partial return of the security deposit. The Landlord states that it did this as the Tenant was arguing with them about the end of the tenancy. The Landlord provides a copy of a cheque. The Landlord states that there was much more damage to the unit than was covered by the amount of the deposit retained.

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. The Tenant's evidence of the purpose for the Landlord providing the Tenant with the \$1,600.00 held a ring of truth in the undisputed circumstances of the Landlord seeking to end the tenancy. The cheque evidence provided by the Landlord as evidence of repayment of the security deposit cannot be clearly read and there is no other evidence to support that this payment was for a partial return of the security deposit. Taken

together I find on a balance of probabilities that the \$1,600.00 was not a return of the security deposit. Based on the undisputed evidence that the Landlord received the Tenant's forwarding address and did not make an application to claim against the security deposit I find that the Landlord must now pay the Tenant **\$5,000.00** as double the combined security and pet deposit plus zero interest. As the Tenant's claim has been successful, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,100.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$5,100.00**. 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 Act.

Dated: October 14, 2020

Residential Tenancy Branch