Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: *MNSD, CNR, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act,* for a monetary order for the return of the security deposit and to recover the filing fee. The tenant also applied in error, to cancel a notice to end tenancy and withdrew this portion of her application, at the start of the hearing.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

The tenancy started on November 01, 2007. Prior to moving in, the tenant paid a security deposit of $700.00. The monthly rent was $1,400.00.

On December 29, 2008 the tenant moved out of the rental unit and provided the landlord with her forwarding address by leaving a written note on the kitchen counter. The landlord stated that he did not receive the note.

The parties kept in touch by phone to make arrangements for the return of the security deposit. The tenant stated that the landlord kept making excuses saying that he did not have sufficient funds and would return the security deposit when he found a new tenant.

On April 01, 2009, the landlord attended the tenant's work place and gave her a cheque in the amount of $400.00. The landlord agreed that he advised the tenant that there was a possibility that the cheque would not be honored for lack of funds.

The landlord stated that he did not return the full amount as he incurred some costs to remove the furniture that the tenant had left behind. The tenant agreed that she had left furniture behind, but did not agree to a deduction of $300.00. The tenant stated that she accepted the cheque because it was long overdue.

The tenant was unable to cash the cheque and she returned the cheque along with a set of keys and a note with her forwarding address to the landlord, shortly after April 01, 2009. The landlord agreed that he had received the envelope containing the above mentioned items.

Analysis

Section 38 (1) of the *Residential Tenancy Act* states that within 15 days after the later of the date the tenancy ends or the date that the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make an application to claim against the security deposit.

If the landlord fails to do so, the landlord may not make a claim against the security deposit and must pay the tenant double the base amount of the security deposit plus accrued interest.

I find that the tenancy ended on December 29, 2008, and that the tenant provided the landlord with a forwarding address in writing, on December 29, 2008 and then again during the first week of April 2009. The landlord has not returned the security nor has he made an application for dispute resolution within 15 days of the date that he received the tenant's forwarding address.

Accordingly, pursuant to Section 38(6) of the *Residential Tenancy Act*, I find that the tenant is entitled to the return of double the security deposit and the accrued interest on the base amount. The tenant has proven her case and therefore is also entitled to the recovery of the filing fee in the amount of $50.00.

The tenant stated that she was not interested in accepting double the security deposit and was applying for the return of the base amount of the security deposit.

Therefore, I find that the tenant has established a claim for the following:

1.	Security Deposit	$700.00
2.	Accrued Interest	$12.28
3.	Filing Fee	$50.00
	Total	**$762.28**

Conclusion

I hereby grant the tenant an order under section 67 of the *Residential Tenancy Act*, for the total of **$762.28**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 12, 2009.

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Dispute Resolution Officer