



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNDC, OLC, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order to recover \$1000.00 for a post dated rent cheque that the landlord cashed after the tenancy ended and to recover the filing fee of \$50.00.

The tenant stated that he mailed the notice of hearing by express post to the landlord to the address that the landlord does business at. The tenant filed a tracking number which indicates that the item was successfully delivered. Despite having received the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Did the landlord cash a rent cheque that he was not entitled to? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenant testified that the tenancy ended on November 30, 2009. At the start of the tenancy, the tenant had given the landlord post dated rent cheques which were not returned to him at the end of the tenancy. The tenant has filed evidence to indicate that on March 26, 2009, the rent cheque for January 2009, in the amount of \$1000.00 was cashed.

The tenant is claiming \$1000.00 as reimbursement for the cashed cheque and \$50.00 for the filing fee.

Analysis

Section 5(4) of the Residential Tenancy Regulations states that a landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord.

Based on the evidence of the tenant and in the absence of any contradictory evidence from the Landlord, I find that on the balance of probabilities, the landlord cashed the tenant's rent cheque, to which he was not entitled. Therefore, I find that the tenant has established a claim for \$1000.00 and since he has proven his case, he is entitled to recover the filing fee of \$50.00.

Accordingly, I hereby grant the tenant an order under section 67 of the *Residential Tenancy Act*, for the total of **\$1050.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1050.00**.

Dated June 18, 2009.

Dispute Resolution Officer