

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit and the recovery of the filing fee.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on April 29, 2009. The tenant filed a receipt with a tracking number. Despite having been served 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.

Issue(s) to be Decided

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

Background and Evidence

The tenancy began on December 01, 2008. The monthly rent was \$950.00 and did not include utilities. The tenant occupied the basement and shared utility costs with the upstairs tenants. Prior to moving in, the tenant paid a security deposit of \$475.00.

The tenant moved out on February 28, 2009 and gave the landlord her forwarding address on March 16, 2009. The landlord mailed the tenant a cheque for \$100.00 within the stipulated fifteen day time frame. The landlord had retained \$ 275.36 for utilities and \$100.00 for having an extra person stay in the rental unit for more than ten days.

The tenant filed a copy of the calculations made by the landlord in writing, by which he arrived at the tenant's share of utilities, along with copies of the utility bills. During the hearing, the tenant agreed that she owed the landlord \$275.36 for utilities. However, the tenant stated that there was no agreement in place to pay extra rent for a visitor and therefore the tenant disagreed with the deduction of \$100.00 for the visitor's stay.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

I find the landlord failed to repay the security deposit in full, nor did he make an application for dispute resolution to retain a part of the security deposit within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

The tenant agreed that she owed the landlord the cost of utilities, the amount of which could only be determined after the bills were received. Therefore, I find that the landlord was entitled to a deduction of \$ 275.36 for utilities. In the absence of evidence to the contrary, I find that the tenant and landlord did not have an agreement regarding extra rent for an additional person. Therefore, I find that the landlord was not entitled to the \$100.00 that he retained from the security deposit.

The landlord also returned \$100.00 to the tenant and therefore currently holds a balance of **\$99.64** and is obligated under section 38 to return this amount, together with the **\$0.60** in interest which has accrued to the date of this judgment. The amount that is doubled is the base amount of the deposit that the tenant was entitled to, which is **\$99.64**. The tenant has proven her case and is entitled to the filing fee of **\$50.00**.

Accordingly, the tenant has established a claim for a total of **\$249.88**.

Conclusion

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$249.88**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 30, 2009.

Dispute Resolution Officer