



Dispute Resolution Services

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

DECISION AND REASONS

Dispute codes: MNSD, FF

Introduction

This was an application by the tenant for the return of a security deposit. The hearing was conducted by conference call. The named tenant attended the hearing. The landlord did not attend, but her agent appeared on her behalf.

Background and evidence

The facts are as follows: The tenants responded to a newspaper advertisement offering to rent a suite in a house. They met with the landlord on September 4, 2008 and agreed to rent the unit. The tenant gave the landlord the sum of \$400.00 and received a receipt for that amount that bore the notation: "damage deposit". The tenant testified that it was agreed that the tenants would move into the rental unit on or around September 26, 2008. No tenancy agreement was prepared by the landlord, notwithstanding section 13 (1) of the Residential Tenancy Act that requires a landlord to prepare a tenancy agreement in writing. The tenant testified that tenants had a change of heart and decided not to rent the unit. He spoke to the landlord on September 9, 2008. He told the landlord of their change of mind and requested the repayment of the deposit. According to the tenant the landlord told him he had to call the police if he wanted his deposit back. The tenant did call the police; he said that he attended at the landlord's home with the police on September 9th. The police talked to the landlord, but the tenant did not; the police relayed his comments to the landlord. The tenant testified that he said that if the landlord would not return the deposit the tenants would move in to the rental unit. The tenant said the landlord's response was that she would not rent the tenants.

The tenant sent a letter to the landlord dated November 12, 2008. -He provided a forwarding address and requested the return of his deposit. He provided his telephone number and suggested that the matter could be settled amicably. He provided proof

that the letter was sent to the landlord and provided a postal acknowledgement of receipt on September 15, 2008.

The landlord's agent stated that the landlord did not receive the tenant's letter and that the police did not attend on September 9, 2008, but rather on September 20, 2008. He said that the landlord did not re-rent the unit until November 1, 2008 and he submitted that the tenant should not be entitled to the return of the deposit, which was more in the nature of a part payment of rent, rather than a security deposit. The landlord did not provide any documentation concerning steps to re-rent the unit and she did not provide a copy of a tenancy agreement with the new tenant.

Analysis and conclusion

The landlord's agent testified that the landlord does not speak English. He received her evidence with respect to the tenancy in advance of the hearing through a translator. This is not the best form of evidence; it would have been preferable to have the landlord attend the hearing and testify with the assistance of a translator. She was not available to answer questions or to hear and respond to the tenant's testimony. Given that the agents' evidence on the landlord's behalf amounts to hearsay upon hearsay, I prefer the tenant's version of events, particularly since it is buttressed by Canada Post records with respect to delivery of documents.

Section 38 of the Residential Tenancy Act provides that a landlord must, within 15 days of the date the tenancy ends, or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, either repay the security deposit, or make an application for dispute resolution to claim against the security deposit.

I find that the landlord received the tenant's forwarding address on September 15, 2008 as recorded on the Canada Post delivery confirmation submitted by the tenant. The landlord did not return the deposit and she did not apply for dispute resolution for an order entitling her to retain the deposit.

The tenant has requested the return of his payment in the amount of \$400.00. He did not request double the amount of the deposit. He filed his application on September 29, 2008. Given that the tenancy was not to commence until on or about September 26, 2008, I find that the tenant is not entitled to double the amount of the deposit. I grant the tenant a monetary order in the amount of \$400.00. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$450.00 and I grant the tenant an order under section 67 in the said amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated November 20, 2008.