

Dispute Resolution Services

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

Decision

Dispute Codes: MNSD, O, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double his security deposit and an overpayment of a late payment fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to an order for the return of double his security deposit?

Did the tenant overpay a late payment fee?

Background and Evidence

The parties agreed that the tenancy began on July 15, 2007 and ended in April 2009 and that the tenant paid a \$438.00 security deposit at the outset of the tenancy. The parties agreed that the tenant left his forwarding address in the rental unit where it was discovered by the landlord on April 30. The landlord submitted a copy of an unsigned cheque for \$438.00 dated April 30, 2009 which she claimed was mailed to the tenant. The tenant denied having received the cheque.

The parties agreed that the tenant did not pay rent for April until April 2. The landlord verbally advised the tenant that he should pay a \$25.00 late payment fee, which he did.

The tenancy agreement provides as follows:

Late payments are subject to a charge against the security deposit as liquidated damages, at the rate of \$2.00 per day, minimum \$6.00. The landlord argued that a \$25.00 charge is a standard charge in the profession and that the tenant verbally agreed to pay \$25.00. The tenant denied having agreed to change the terms of the tenancy agreement.

Analysis

Addressing first the tenant's claim for double the security deposit, I accept the landlord's evidence that the security deposit was mailed on April 30. As the landlord attempted to return the deposit, I find that the tenant is not entitled to an award of double the deposit. I award the tenant \$448.32 which represents the deposit plus \$10.32 in interest.

As for the claim for the overpaid late fee, I find that the tenant did not agree to change the terms of the tenancy agreement. I find that the tenant paid the \$25.00 late payment fee because he did not recall the terms of the tenancy agreement and had assumed the landlord would comply with the terms of the agreement. I further find that the parole evidence rule applies, which prevents the landlord from changing the written terms of the agreement when the external evidence directly conflicts with those terms. I interpret the term as meaning that the tenant is obliged to pay a late fee at a rate of \$2.00 per day for each day the rent is late and that the minimum charge that could be applied is \$6.00. I order the landlord to return the \$19.00 overpayment to the tenant.

I find that the tenant is entitled to recover the \$50.00 filing fee paid to bring his application.

Conclusion

I grant the tenant an order under section 67 for the sum of \$517.32 which represents the security deposit and interest, the \$19.00 overpayment of the late payment fee and the \$50.00 filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated September 14, 2009.
