



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for the return of double the security deposit and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on September 16, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to receive double the security deposit back?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on November 01, 2008. This was a fixed term tenancy which expired on May 30, 2009 and a new fixed term tenancy agreement was entered into on June 01, 2009. This agreement was due to expire on June 01, 2010. However, the tenancy ended by mutual agreement on June 30, 2009. Rent for this property was \$2,600.00 per month due on the 1st of each month. The tenant and landlord dispute how much the tenant paid for his security deposit.



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenant claims he paid \$1,100.00 on October 24, 2008 and \$1,500.00 on November 01, 2008 to a total amount of \$2,600.00. The landlord claims the tenant paid \$1,100.00 only on October 24, 2008.

The tenant seeks the return of his security deposit. The tenant testifies that he gave the landlord his forwarding address in writing on June 30, 2009 and again on September 16, 2009. The landlord had 15 days from June 30, 2009 to return the tenants security deposit or file an application for Dispute Resolution to keep all or part of it.

The tenant testifies that at the end of the tenancy there were some damages to the rental property. He asked the landlord to get some quotes for the work and he would either make the repairs himself or authorise her to do the work and he would pay for it. The tenant claims he did not receive any quotes from the landlord and did not receive her evidence sent in for this hearing. The tenant testifies that he did attend the move in and move out condition inspections but has not received a copy of the move out condition inspection from the landlord.

The landlord claims she withheld the tenants security deposit of \$1,100.00 because the tenant left damages to the rental property and many items of personal belongings were also left behind. The landlord testifies that she had to move back into the property and had pay contractors to clean the property, pay to remove the tenants' belongings and pay for the repairs in order to make the property liveable to the amount of \$3,316.67.

Towards the end of the hearing the landlord becomes angry and left the conference call. The hearing continued in her absence.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the landlord did receive the tenants forwarding address on June 30, 2009. I also

Residential Tenancy Branch
Ministry of Housing and Social Development

find the landlord did not make an application to keep all or part of the security deposit within the 15 days allowed under the *Act*.

Section 38 of the *Residential Tenancy Act* states;

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6)(b) of the *Act* states:

(6) If a landlord does not comply with subsection (1), the landlord

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, due to the above I find the landlord has not complied with section 38 of the *Act* and must return double the tenants' security deposit. However, I find in favour of the landlords evidence concerning the amount of security deposit paid. She has provided a receipt showing that the tenant paid \$1,100.00 on October 24, 2008 and the remainder of the security deposit was due with the first months rent on or before November 01, 2008. The tenant has not



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

provided any evidence to support his claim that he paid the additional \$1,500.00 for the outstanding amount of security deposit.

As the tenant has been partially successful with his claim I find he is entitled to recover the \$100.00 filing fee from the landlord. I find the tenant is entitled to a Monetary Order for the following amount:

Double the security deposit paid	\$2,200.00
Filing fee	\$100.00
Total amount due to the tenant	\$2,303.11

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2303.11**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 16, 2009.

Dispute Resolution Officer