



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of his security deposit. Both parties participated in the conference call hearing.

Issues(s) to be Decided

Is the tenant entitled to an award for which he did not apply?

Background and Evidence

The parties agreed that the tenant paid a \$500.00 security deposit in March 2006. The tenancy ended at the end of July 2009 and the tenant gave the landlord his forwarding address at that time. On August 20, the tenant made an application with the Residential Tenancy Branch for a monetary order for \$567.00, which represented the security deposit, interest and the \$50.00 filing fee paid to bring this application. The tenant testified that after he made the application, he received in the mail a cheque for the security deposit and interest. The tenant entered into evidence the envelope in which the cheque had been mailed which shows a postmark of August 19, 2009. The landlord testified that the letter was put into the mailbox on August 14.

At the hearing the tenant advised that he wanted an award for an amount equivalent to the security deposit pursuant to section 38 of the Act which provides that when a landlord fails to repay a security deposit within 15 days of the end of the tenancy the landlord must pay double the security deposit to the tenant.

Analysis

There is no dispute that the tenant is now in receipt of the security deposit and interest. I do not accept that the landlord mailed the deposit on August 14 as I find it unbelievable that it would take 5 days for the letter to be carried from the mailbox to the post office where it would be postmarked. I find that the landlord failed to return the deposit within 15 days of the end of the tenancy and accordingly find that the landlord must bear the cost of the tenant's filing fee.

As for the tenant's oral claim for an award for double the security deposit, I find that it must be denied. There exists in our justice system a general principle which requires an applicant in a legal action to advise the respondent of the claim made against them. In this case, the only notice of the claim that the respondent had was on the application for dispute resolution, in which the tenant only claimed the amount of his security deposit. It was open to the tenant to claim the \$1,067.00, which would have represented double his security deposit, the interest and filing fee, but he chose not to do so. I find that his failure to do so deprived the landlord of her right to know the claim being made against her. Accordingly I find that I am unable to award the tenant double the security deposit.

Conclusion

I grant the tenant a monetary order under section 67 for \$50.00 which represents the filing fee paid to bring this application.

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: December 18, 2009
