



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This decision was amended on February 15, 2010, pursuant to a Request for Correction or Clarification filed by the Tenant. The amended decision records the Tenant's correct middle initial, which was initially recorded as "S".

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The Tenant stated that he personally delivered copies of the Application for Dispute Resolution and Notice of Hearing to one of the Landlord's employees at the office of the Landlord, which is located at the service address for the Landlord on the Application for Dispute Resolution, on October 06, 2009. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to a monetary order for to recover money that the Landlord took from his account without authority and for expenses incurred as a result of that withdrawal; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Tenant stated that he believes he moved into this rental unit in 2007; that he was paying "two hundred and something" in monthly rent; and that he vacated the rental unit on May 31, 2009.

The Tenant stated that he initially delivered his rent to the Landlord's office; that sometime during this tenancy he completed a form that authorized the Landlord to automatically withdraw his rent payment from his financial institution; that the "Ministry for Disabled Persons" paid his rent directly to the Landlord at some point during this

tenancy; and that he asked the Landlord to deactivate the automatic rent withdrawal after the Ministry started to pay his rent, which he assumed they had done.

The Tenant submitted a copy of a Condition Inspection Report for the rental unit that is dated May 31, 2009. The report indicates that the rental unit was not cleaned and that a sofa and other items were left in the rental unit. The signature area of the Condition Inspection Report that was submitted is illegible, however the Tenant stated that he did not sign the Condition Inspection Report. The Tenant stated that when he vacated the rental unit he was not advised that he would be required to pay anything for cleaning the rental unit and that he did not agree to pay anything for cleaning the rental unit.

The Tenant submitted a letter and a statement from the Landlord, dated July 08, 2009, which states that the Landlord is charging the Tenant \$132.50 for "chargebacks", which includes a charge of \$80.00 for cleaning the rental unit and \$52.50 for disposing of rubbish. The letter advises the Tenant that the debt will be forwarded to a collection agency if an agreement for payment is not reached within thirty days.

The Tenant stated that on September 21, 2009 his current landlord advised him that his rent cheque for September had been returned by his financial institution due to lack of funds. He stated that he contacted his financial institution and determined that the Respondent had withdrawn \$132.50 from the Tenant's bank account. He stated that he subsequently contacted an agent for the Respondent, who confirmed that the Landlord had withdrawn \$132.50 in compensation for the costs of cleaning the rental unit.

The Tenant submitted a copy of a bank statement, which he stated was for his personal bank account. The statement shows that he had \$743.77 in his account on August 26, 2009; that \$132.50 was withdrawn on September 01, 2009; that a cheque in the amount of \$715.00 was withdrawn on September 01, 2009; that the \$715.00 cheque was returned due to insufficient funds on September 02, 2009; and that he was charged a \$40.00 NSF fee on September 02, 2009. The statement shows that the \$132.50 withdrawal was for "residential rent".

The Tenant submitted a copy of a letter from his current landlord, dated September 21, 2009, in which the landlord advised the Tenant that his rent cheque, in the amount of \$715.00, had been returned by his financial institution due to insufficient funds; that he was being charged \$25.00 for tendering an NSF cheque; and that he was being charged \$25.00 for a late fee.

The Tenant is seeking the return of the \$132.50 that was withdrawn from his bank account; compensation for the \$40.00 fee that he was charged by his financial institution; compensation for the \$90.00 in fees that he has been charged by his current landlord; \$3.00 for the cost of a certified cheque; and \$42.00 for transportation costs related to resolving this matter.

Analysis

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that this Landlord believed that the Tenant owed \$132.50 for the cost of cleaning the rental unit at the end of the tenancy. I have no evidence that causes me to conclude that the Tenant agreed that he owed \$132.50 for cleaning or that the Landlord had authorization from the director to collect this amount from the Tenant for the cost of cleaning the rental unit.

Based on the evidence provided by the Tenant and in the absence of the evidence to the contrary, I find that the Landlord withdrew \$132.50 from the Tenant's account on September 01, 2009. In reaching this conclusion, I considered the following:

- The Tenant's testimony that he was told by his financial institution and an agent for the Landlord that the Landlord withdrew \$132.50 from his account
- The Tenant's testimony that the Landlord had authority to automatically withdraw rent money from his financial institution during his tenancy
- The absence of a denial from the Landlord, although the Landlord was served with details of the dispute
- The documentary evidence that clearly shows the Landlord believed that \$132.50 was owed by the Tenant
- The bank statement that establishes that \$132.50 was withdrawn for "rent" on September 01, 2009
- The documentary evidence that shows that the Tenant currently pays rent of \$715.00 and that his current landlord tendered a cheque in that amount on September 01, 2009, which causes me to conclude that the "rent" withdrawal of \$132.50 was not related to rent for his current residence.

As there is no evidence to conclude that the Landlord had the right to withdraw \$132.50 from the Tenant's financial institution for money owed in relation to this tenancy, I find that the Landlord must return \$132.50 to the Tenant.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the rent cheque that was tendered for the Tenant's rent payment for September of 2009, in the amount of \$715.00, was returned by the Tenant's financial institution because the Landlord had withdrawn \$132.50 from his account. I based this conclusion on the bank statement that was submitted in evidence, which shows that the Tenant would have had sufficient funds in his account to cover the September rent payment if the Landlord had not withdrawn \$132.50.

The documentary evidence submitted by the Tenant shows that the unauthorized withdrawal resulted in a \$40.00 NSF fee that was charged to him by his financial institution. As the Landlord's actions were directly responsible for this fee, I find that the Landlord must compensate the Tenant for this fee, in the amount of \$40.00.

The documentary evidence submitted by the Tenant shows that the unauthorized withdrawal resulted in a \$25.00 NSF fee that was charged to him by his current landlord and a \$25.00 late fee that was charged to him by his current landlord. As the Landlord's actions were directly responsible for these fees, I find that the Landlord must compensate the Tenant for these fees, in the amount of \$50.00. I find that the Tenant submitted no evidence to support his claim that he was charged \$90.00 in fees by his current landlord, and I cannot award him the amount of his entire claim.

I find that the Tenant has submitted no evidence to corroborate his statement that he incurred a \$3.00 fee for a certified cheque or travel expenses of \$42.00 and I dismiss his application for those amounts.

I find that the Tenant's application has merit, and I find that the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$272.50, which is comprised of \$132.50 for the unauthorized withdrawal from the Tenant's account; \$90.00 in fees that were incurred as a result of that withdrawal; \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for the amount \$272.50. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced 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: January 28, 2010.
Amended: February 15, 2010

Dispute Resolution Officer