

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a monetary order for the return of double his security deposit less the amount already received and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was not done in accordance with section 89 of the *Act*. The Tenant provided the Landlord with a print out of his original on-line application however the Tenant failed to serve the Landlord with the Notice of Dispute Resolution package. The Landlord was able to attend today's hearing after obtaining a copy of the Notice of Dispute Resolution by calling the Residential Tenancy Branch on their own.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order for the return of double his security deposit less amounts already received, in accordance with sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy began on January 1, 2008 and ended on July 31, 2009. The Tenant paid a security deposit of \$600.00 on January 1, 2008. The Landlord refunded the Tenant \$398.77 of his security deposit on August 11, 2009 which was the \$600.00 security deposit, plus interest of \$9.77, less \$85.00 for carpet cleaning, and \$126.00 for cleaning the rental unit.

The Tenant argues that the Landlord's staff changed the move out inspection report, adding the suite cleaning cost of \$126.00, after the Tenant signed the form on August 1, 2009.

The Landlord testified and made reference to her documentary evidence which included a letter sent to the Tenant on August 28, 2009 confirming that the dollar amount of \$126.00 for cleaning had been added after the Tenant signed the document for which the Landlord apologized. The Landlord confirmed that they made arrangements to allow the Tenant to pick up the \$126.00 in cash however the Tenant never contacted the Landlord to follow through in picking up the money.

The Tenant confirmed receipt of the Landlord's August 28, 2009 letter. The Tenant could not provide an explanation why he waited 19 or 20 days, after receiving the Landlord's August 28, 2009 letter, before filing his application for dispute resolution. The Tenant's position is that because the Property Manager changed the legal document, (the move-out inspection form) after the Tenant signed it; the Tenant is now entitled to return of double his security deposit.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Based on the evidence and testimony before me I find that the Tenant failed to mitigate his losses and accept the Landlord's offer to reimburse the Tenant for the \$126.00. Therefore the Tenant has failed to prove the test for damage or loss as listed above and

I hereby dismiss his claim for return of double the security deposit less payments previously received.

The evidence supports that the Landlord has admitted that the \$126.00 charge was added after the Tenant signed the move-out inspection report, in error, and the Landlord has agreed to return the amount to the Tenant. Based on the aforementioned I hereby award the Tenant recovery of the \$126.00 plus interest of \$1.89 from January 1, 2008 to August 28, 2009, for a total amount of **\$127.89**.

As the Tenant was not primarily successful with his application I decline to award him recovery of the \$50.00 filing fee.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$127.89**. The order must be served on the respondent Landlord 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: February 05, 2010.

Dispute Resolution Officer