

DECISION

Dispute Codes MNSD, MND, MNR, FF

Introduction

This was the hearing of applications by the tenants and by the landlords. The applications were scheduled to be heard together by conference call. The tenants and the named landlord participated in the hearing and they acknowledged having received each others' applications for dispute resolution, Notices of Hearing and documentary evidence.

Background and Evidence

The tenants made a previous application for dispute resolution seeking payment of double the amount of their security and pet deposits. The application was heard on January 15, 2010. In the decision issued that day the Dispute Resolution Officer found that the landlord received the tenants' forwarding address on January 4, 2009 and the tenants' application was therefore premature. She dismissed the tenants' application for return to their security deposit and pet deposit with leave to reapply.

On January 21, 2010 the tenants applied for the return of the deposits; they requested a monetary order in the amount of \$412.00. Although the landlords participated in the January 15th hearing, they did not file an application for dispute resolution until March 11, 2010 and they did not return the tenants' deposits. The landlord testified that they were out of the country at the time of the January 15, 2010 hearing and did not return until later in January.

In their application for dispute resolution the landlords claimed payment of the sum of \$780.00. The landlord testified that in November, 2009 the tenants paid \$420.00 of the \$550.00 that was due for rent and that the tenants did not pay any rent for December, 2009. The tenants moved out of the rental unit in mid-December. The landlord claimed

a further \$100.00 for carpet cleaning, required because the tenants soiled the carpets and did not clean them before moving out.

The tenants acknowledged that they did not pay rent for December, but said that they paid the full rent in cash for November and did not receive a receipt from the landlord. The tenant said that they always paid the rent in cash and never received a receipt from the landlord. The landlord submitted a copy receipt dated November 5, 2009 acknowledging receipt from the tenants of the sum of \$420.00 with the notation that the tenants still owe \$130.00 for November rent. The tenant denied signing the receipt. When it was pointed out that it was signed by the landlord, he denied receiving it. The tenants also testified that they did not soil the carpets because they placed their own rugs on top of the carpets.

Analysis and Conclusion

The landlords did not return the tenants deposits or make application to claim them within 15 days of receipt of the tenants forwarding address. They did not file their application from dispute resolution until March 11, 2010, more than two months after receiving the tenants' forwarding address. I note that in their application they requested a monetary order, but did not make any claim to retain the deposits.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an Order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Arbitration. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38 (6) provides that a landlord who does not comply with this provision may not make a claim against the security deposit and must pay the tenants double the amount of the deposit. At the commencement of the tenancy in June, 2009 the tenants paid a security deposit of \$275.00 and a pet deposit of \$137.00. I find that the tenants

are entitled to a monetary order in the amount of \$824.00, being double the amount of the deposits held by the landlords. The tenants did pay a filing fee for their application.

I accept the landlords' testimony that the tenants failed to pay the full rent for November, 2009. The tenants' evidence that the landlord did not provide receipts was contradicted by the receipt produced by the landlord. The receipt was submitted by the landlord with the application for dispute resolution without knowledge that the tenant would testify that full rent was paid for November and there is no basis for me to conclude that the November receipt was a concoction or a forgery. The tenant acknowledged that December rent was not paid. The landlord produced a receipt for carpet cleaning; I accept the landlord's testimony that the cleaning was required and allow this claim.

I find that the landlords are entitled to a monetary order in the amount of \$780.00 for unpaid rent and carpet cleaning. The landlords are entitled to recover the \$50.00 filing fee for their application for a total award of \$830.00. Pursuant to section 72 of the *Residential Tenancy Act*, I set off the award made to the tenants against the award granted to the landlords. This results in a net amount owing to the landlords of \$6.00 and I grant the landlords a monetary order in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: March 23, 2010.
