

DECISION

Dispute Codes FF, MNDC, MNSD

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the applicant the opportunity to testify at the hearing.

The respondent was served with notice of the hearing by hand on January 27, 2010, but did not join the conference call that was set up for the hearing.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$2288.97 in the applicant is also requesting that the respondent bear the \$50.00 cost of the filing fee it was paid for the application for dispute resolution.

Background and Evidence

The applicant testified that:

- He was served with a Section 49 two month Notice to End Tenancy on August 20, 2009.
- On August 31, 2009 he served the landlord with a 10 day Notice to End Tenancy pursuant to section 50 of the Residential Tenancy Act.
- There rent was paid in full up to the end of August 2009 however since the landlord informed him he would not pay him the one month compensation required under the Residential Tenancy Act, he did not pay any rent for the 10 days of September 2009.

- On August 31, 2009 he serve the landlord with a written forwarding address and requested return of the security deposit however to date it has not been returned.

The applicant is therefore requesting an order as follows:

The equivalent of one months rent compensation required under the Residential Tenancy Act, less \$483.33 - 10 days rent for September 2009	\$966.67
Penalty for failing to return security deposit	\$650.00
Filing fee	\$50.00
Total	\$2339.68

Analysis

Section 51 of the Residential Tenancy Act states:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

The tenant did give notice under section 50, and withheld 10 days rent; however the landlord must now pay the tenant \$966.67 which is the equivalent of one month rent minus the 10 days that has already been withheld.

Further the landlord has not returned the tenant's security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

This tenancy ended on September 10, 2009 and the landlord had a forwarding address in writing by August 31, 2009 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore, the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a deposit of \$650.00, and therefore the landlord must pay \$1300.00 plus interest of \$23.01, for a total of \$1321.01.

I further order that the respondent/landlord bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution.

Conclusion

I have issued an order for the respondent/landlord to pay \$2337.68 to the applicant.

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: April 08, 2010.

Dispute Resolution Officer