

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application by the tenant for a monetary order. The landlord did not participate in the conference call hearing. The tenant presented evidence showing that she served the landlord with her application for dispute resolution and notice of hearing by registered mail on February 19. I accepted that the landlord had been properly served with notice of the hearing and the hearing proceeded in her absence.

On April 28 the Residential Tenancy Branch received a package of evidence from the landlord which included a written request for an adjournment. The landlord indicated that she would be in England on the date of the hearing and requested that the hearing be adjourned. The landlord did not appoint an agent to represent her and did not explain why an agent could not be appointed. Nor did the landlord explain why she would be unable to participate in the telephone conference call from England. I found that the landlord had not established that an adjournment was required and the hearing proceeded in her absence. At the hearing the tenant stated that she had received no evidence from the landlord. Accordingly I did not consider the evidence submitted by the landlord as the tenant had not been served with a copy.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The undisputed testimony of the tenant is as follows. The tenant viewed the rental unit at the end of July 2009 and agreed to rent the unit at a rate of \$800.00 per month with

the tenancy commencing on August 1, 2009. The tenant paid the landlord \$700.00 in cash, which represented \$400.00 for the security deposit and \$300.00 paid toward rent for August. Although the payment was made in July, the landlord issued a receipt dated August 1 which specified that the payment was applied to the security deposit and rent. The tenant moved into the rental unit on or about August 1 and a few days thereafter paid the landlord \$800.00 in rent. Although the payment was made several days after the beginning of August, the landlord issued a receipt for \$800.00 dated August 1. The tenant testified that she had forgotten that she had already made a \$300.00 payment toward August's rent.

The parties mutually agreed that the tenancy would end on August 31 and the tenant vacated the rental unit on or about September 4. The tenant gave her forwarding address in writing to the landlord's boyfriend on the day she moved out and on September 16 sent the landlord an email advising of her forwarding address. The landlord replied to this email on September 17 by explaining the ways in which the landlord considered the tenant to have broken the tenancy agreement.

The tenant seeks an award for double her security deposit and recovery of the \$300.00 overpayment of rent for August.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I accept the undisputed testimony of the tenant and find that the tenant provided her forwarding address on both September 4 and September 16. I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$400.00. The amount that is doubled is the base amount of the deposit. The tenant is awarded \$800.00.

I find that the tenant overpaid rent for August by \$300.00 and find that she is entitled to recover that overpayment. The tenant is awarded \$300.00.

Conclusion

I grant the tenant an order under section 67 for \$1,100.00 which represents double the security deposit and the \$300.00 rent overpayment. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: May 07, 2010

Dispute Resolution Officer