

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

The landlord submitted evidence to the Residential Tenancy Branch (RTB) on June 4, 2010. The agent testified that this evidence was not served on the tenant. As the submission to the RTB was not within the 5 days prior to the hearing required by the Residential Tenancy Rules of Procedure and since the tenant did not receive the evidence, I find it cannot be considered in this hearing.

The landlord's agent testified the landlord is actually her mother and the tenant's application named the agent as the landlord on her application. Based on the agent's testimony I amend the tenant's application to correct the name of the landlord.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on December 1, 2008 as a month to month tenancy for a monthly rent in the amount of \$1,400.00 due on the 1st of the month, a security deposit of \$700.00 was paid at the start of the tenancy.

The tenant submitted several emails between herself and the landlord's agent during the month of December 2009 regarding the return of the security deposit. One of these emails, dated December 6, 2009 provided the landlord with the tenant's forwarding address.

The parties agree that a move out inspection had been scheduled for December 1, 2009. The tenant indicated that the appointment was set for 3:00 p.m. but states the landlord's agent "texted" her stating she could not make it until 4:00 p.m. however the tenant could not wait for this time and had to leave.

The agent testified that she tried to reschedule the inspection several times before the tenant left town for Christmas. The tenant testified that the landlord did not offer another opportunity for a walk through until the tenant insisted shortly after Christmas to complete one.

The tenant did acknowledge that she felt they owed money for the utilities and was expecting an amount around \$80.00. The landlord did provide a copy of a bill for one of the utilities at the walk through that eventually occurred on December 28, 2010 but the tenant was never provided with a copy of the utility bills.

The landlord testified that the utility bills did arrive and the tenant's portion amounted to \$106.68 but no copies of the bills were submitted into evidence or provided to the tenant. In the absence of the bills the tenant felt these were high but the landlord testified they included adjustments made by the utility companies for actual readings over previous estimates.

Despite the discrepancy the parties agreed the tenant would be responsible for \$80.00 in satisfaction of the outstanding utilities.

Analysis

At the end of a tenancy Section 35 of the *Act* requires a landlord and tenant to conduct an inspection of the condition of the rental unit on or after the day tenant ceases to occupy the rental unit or on another mutually agreed day.

The landlord is required to offer at least 2 opportunities for an alternate time and if the tenant fails to agree the landlord must propose another opportunity by provide the tenant with a notice in writing of the scheduled time. If the tenant fails to participate then they extinguish their right to the return of the security deposit.

Regardless of these obligations, Section 38 states that a landlord must, within 15 days of the end of the tenancy and the provision of the tenant's forwarding address in writing, the landlord must repay the security deposit less any mutually agreed upon amounts or file an application to claim against the security deposit.

I find the tenant provided the landlord with her forwarding address on December 6, 2009 and was required by Section 38 to repay the tenant or file an application to claim against the security deposit by December 21, 2009.

I recognize the parties still had not completed their move out inspection by this date but once the inspection was completed, on December 28, 2009 and to present the landlord has still failed to file an application to claim any of the security deposit.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,370.00** comprised of \$1,400.00 double the amount of the security deposit less \$80.00 as agreed to for utilities; plus the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: June 09, 2010.

Dispute Resolution Officer