

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was scheduled for 9:00 a.m. on this date to hear the landlord's application for a Monetary Order for unpaid rent and cleaning, authorization to retain the security deposit and recovery of the filing fee. The tenant appeared at the hearing but the landlord did not. The teleconference call was ended at 9:10 a.m. Since the landlord did not appear at the hearing but the tenant appeared and was prepared to proceed, I dismissed the landlord's claims without leave.

The tenant advised that he had not received a refund of his security deposit. I proceeded to hear from the tenant about the security deposit as the landlord's application to retain the security deposit was dismissed.

Issues(s) to be Decided

1. Is the tenant entitled to return of the security deposit?

Background and Evidence

The tenant testified he paid a \$400.00 security deposit to the landlord and that the security deposit has not been refunded to him. The tenant advised that he provided the landlord with a forwarding address and that he did not authorize the landlord to retain his security deposit.

The landlord had provided evidence including:

- A registered mail receipt indicating the tenant's forwarding address;

- A letter from the landlord confirming the tenant returned keys to the rental unit and provided the landlord with a forwarding address on December 6, 2009; and,
- A notice to vacate signed by the tenant and given to the landlord on December 1, 2009 for an effective date of December 1, 2009;
- A move-in and move-out inspection report indicating the tenant vacated December 7, 2009 and the date of the move-out inspection report was December 31, 2009. The tenant did not sign the move-out inspection report.

Analysis

Where a landlord's application to retain the tenant's security deposit has been dismissed the landlord will be ordered to return the security deposit to the tenant unless the tenant's right to the security deposit has been extinguished under the Act.

In this case, it is evident the tenant did not sign the move-out inspection report. It is unclear whether the landlord gave the tenant at least two opportunities to participate in a move-out inspection, as required by the Act. Therefore, I cannot determine from the evidence before me which party extinguished their right to the security deposit.

In light of the above, I do not order the return of the security deposit. Rather, the tenant has the right to make an application for return of the security deposit by filing an Application for Dispute Resolution. The tenant may request double return of the deposit if the tenant is of the position the landlord violated section 38 of the Act.

For clarity, the landlord's claims for unpaid rent and cleaning have dismissed and the landlord may not make those claims again.

Conclusion

The landlord's application has been dismissed. The tenant is at liberty to make an Application for Dispute Resolution to request return of the security deposit.

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 11, 2010.

Dispute Resolution Officer