



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit, NSF charges and the filing fee.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*. The tenant stated that he served the hearing document to the landlord by registered mail to the address that the landlord provided as his mailing address. The tenant filed a tracking number.

Despite having been served the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issue to be Decided

Is the tenant entitled to the return of double the security deposit?

Background and Evidence

The tenancy started on February 01, 2009. The monthly rent was \$1,050.00 due on the first day of each month. The tenant paid a security deposit of \$500.00.

The tenancy ended on February 28, 2010. Prior to moving out, the tenant cleaned the unit and hired a professional carpet cleaner at a cost of \$200.00. The agent for the landlord conducted a move out inspection in the presence of the tenant and indicated to him that everything was in order and that the landlord would mail the tenant his security deposit. On March 04, 2010 the tenant provided his forwarding address to the landlord, via email. The landlord replied on March 06, acknowledging receipt of the same and agreed to mail a cheque to the tenant.

On March 08, 2010 the landlord advised the tenant by email that his agent had informed him that the unit was not clean and had some pet damage. The landlord indicated that he would assess the damage himself and get back to the tenant. The landlord wrote an email on March 15, stating that from what he understood about the cleaning and damage, the tenant would be “lucky to get anything back”. The tenant did not hear back from the landlord after March 15 and filed this application on April 12, 2010.

The tenant stated that he had given the landlord post dated cheques and the landlord cashed a cheque in March, after the tenancy ended. Since the tenant did not have sufficient funds to honour the cheque, his financial institution returned the cheque as NSF and charged the tenant a fee of \$30.00.

The tenant has applied for a monetary order for double the security deposit (\$1,000.00), the NSF fee (\$30.00) and the filing fee (\$50.00).

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.

Based on the sworn testimony of the tenant and in the absence of any contradictory evidence, 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 \$500.00 and is obligated under section 38 to return double this amount. The landlord did not have the authority to cash a rent cheque after the tenancy had ended. Therefore I find that the tenant is entitled to the financial fee of \$30.00 that was levied on him by the financial institution for the NSF cheque. Since the tenant has proven his case, he is also entitled to the recovery of the filing fee of \$50.00.

Overall the tenant has established a claim for 1,080.00. I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the tenant a monetary order in the amount of **\$1,080.00**.

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: August 18, 2010.

Dispute Resolution Officer