



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD MNR MND FF

Introduction

This hearing dealt with an application by the tenant for return of double the security deposit and recovery of the filing fee and an application by the landlord for a monetary order and recovery of the filing fee. Both parties attended the hearing and had an opportunity to be heard.

Issues(s) to be Decided

Are either of the parties entitled to the orders requested?

Background and Evidence

This tenancy began on December 15, 2009. The rent was \$650.00 per month and a security deposit of \$325.00 was paid at the start of the tenancy. On March 2, 2010 the tenant gave the landlord written notice to end the tenancy effective March 31, 2010. The tenant ultimately vacated the rental unit on March 20, 2010. The tenant provided the landlord with his forwarding address in writing in person on April 17, 2010. The landlord has not returned any of the deposit to the tenant. The landlord filed an Application for Dispute Resolution claiming against the deposit of May 4, 2010. The tenant filed his Application for Dispute Resolution on June 30, 2010.

Analysis

Tenant's Claim - Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. In the present case, the landlord did neither. The landlord did file an application claiming against the security deposit but missed the 15-day deadline by one day.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord may not make a claim against the deposit and must pay the tenant double the amount of the security deposit.

Based on the above, I find that the tenant is entitled to an order that the landlord pay to him double the security deposit. I therefore order that the landlord pay to the tenant the sum of \$650.00.

Landlord's Claim – The landlord has made a total monetary claim against the tenant in the amount of \$1,900.00. This claim is comprised of (a) \$650.00 in unpaid rent for the month of April based on the tenant's failure to give a full month's written notice to end tenancy; and (b) \$1,250.00 in cleaning charges and damage to the rental unit.

Section 45 of the Act provides that a tenant must give one full month's written notice to end a tenancy. In the present case, the tenant did not give written notice until March 2, 2010 which was too late. The earliest the tenant was entitled to end the tenancy based on that notice was April 30, 2010. As a result, the tenant remained liable to pay the rent for April. I therefore find that the landlord is entitled to an order that the tenant pay to the landlord the sum of \$650.00.

With respect to the balance of the landlord's claim, I am not satisfied that the evidence submitted by the landlord provides adequate support for the claim. It is true that the landlord submitted photos showing a dirty fireplace and oil-stained driveway and other small items but there is no way to tell when these photos were taken. Further, in the

absence of a move-in or move-out condition inspection report, it is impossible for me to determine whether the tenant is responsible for the mess or damage. I therefore dismiss the balance of the landlord's claim.

Filing fees – I dismiss both parties' requests for recovery of the filing fee.

Conclusion

I have found that both parties are entitled to monetary orders in the amount of \$650.00. When set off against each other, these orders cancel each other out. As a result no money is owing from either party to the other.

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*.