



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This was an application by the tenant for a monetary order, including an order for payment of double the amount of his security deposit. The hearing was conducted by conference call. The tenant and the landlord's representative participated in the hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary order in the amount of double his security deposit?

Background and Evidence

At the commencement of the hearing the landlord's representative said that the landlord submitted documents sent by fax, including a copy of the original tenancy agreement for a fixed term. She testified that the landlord opposed the tenant's application because, among other matters, he breached the tenancy agreement by moving out before the end of the fixed term. The landlord's representative testified that the tenancy agreement contained a liquidated damage clause that obliged the tenant to pay the amount of one month's rent in the event that he moved out before the end of the fixed term. The landlord did not file an application for dispute resolution to claim a monetary award. The landlord's representative testified that the tenant verbally agreed that the landlord could retain the security deposit in satisfaction of its claim for liquidated damages.

The documents referred to by the landlord were not contained in the application file. After the hearing I made inquiries and found no record that any documents had been faxed or delivered to the Residential Tenancy Office. I accept that the landlord faxed documents that for unaccountable reasons did not arrive or were misplaced. For the reasons that follow I have determined that I may decide this application without reference to the respondent's documents,

The tenant paid a security deposit in the amount of \$475.00 before the tenancy commenced on July 1, 2009. The tenant gave written notice and moved out of the rental unit on March 31, 2010. He participated in a move-out inspection on March 31, 2010. He provided his forwarding address in writing on the condition inspection form. He signed the condition inspection form. There was no mention on the form of any deductions or amounts to be retained by the landlord from the security deposit and the tenant did not agree in writing to any deductions.

The tenant filed his application for dispute resolution on April 25, 2010. He served the application by registered mail. The landlord received the application

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later.

I am satisfied that the tenant provided the landlord with his written forwarding address and that he served the landlord with documents notifying the landlord of this application

as required by the legislation. The security deposit was not refunded within 15 days as required by section 38 and the doubling provision of section 38(6) therefore applies.

Even if I accept that the landlord's documents establish each point alleged by the landlord's representative, it would not alter the outcome of this proceeding because the landlord acknowledged that it does not have the tenant's consent in writing to retain the deposit and it has not filed an application for dispute resolution to claim the deposit as required by the *Residential Tenancy Act*, section 38.

I grant the tenant's application and award him the sum of \$950.00. No interest has accrued on the original deposit amount. The tenant acknowledged indebtedness to the landlord in the amount of \$30.00 for a key fob deposit and \$42.00 for laundry charges. I therefore deduct the sum of \$72.00 from the award to the tenant. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$928.00 and I grant the tenant a monetary order in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

It will be up to the landlord to commence its own application if it wishes to pursue a claim against the tenant