



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of the security deposit and rent paid for two months. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the tenant entitled to the return of the security deposit and rent for two months?

Background and Evidence

The tenancy started on February 01, 2010. The monthly rent was \$375.00 and prior to moving in the tenant paid a security deposit of \$187.50.

The tenant stated that he first made contact with the landlord in the store that he owns and operates out of the building that houses rental units. The landlord assisted him in filling out the rental forms that Social Services required. The rent was paid directly to a numbered company.

The tenant stated that on March 25, 2010, he got into an argument with some tenants. The landlord was out of town at that time and the acting manager stepped in and assaulted the tenant. He then informed the tenant that he had to move out. The tenant left and returned a couple of days later and was allowed access to the rental unit for the sole purpose of removing his personal belongings.

As is common practice, rent is paid by Social Services directly to the landlord at the end of each month for the following month. Therefore on March 27, the tenant's rent for April had already been paid to the landlord.

The tenant met with the landlord in his store, approximately five days later and asked for the return of the security deposit and rent for April. The tenant stated that the landlord cursed at him and asked him to leave the store.

On April 08, 2010 the tenant sent a letter to the landlord requesting him for the return of his security deposit and rent for April. The tenant included his forwarding address in the letter. The tenant did not hear back.

The tenant filed a copy of the above letter along with verification of having paid his rent for April.

The landlord stated that he was not the landlord and had nothing to do with the tenant. He stated he lived in the building and owned the store that was located in the building, but had not received rent from the tenant. He stated that the tenant's rent went directly to a numbered company and therefore he was not liable for the tenant's claim.

Analysis

Section 1 of the *Residential Tenancy Act* addresses definitions of terms related to *Act*. As per section 1, the term "*landlord*" is defined as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

1. Permits occupation of the rental unit under a tenancy agreement, or
2. Exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement

Based on the above definition, I find that the landlord in this case was either the owner of the unit or an agent of the owner and permitted occupation of the rental unit.

Therefore for the purpose of this tenancy, the respondent is the landlord and bears the responsibilities of the landlord.

Based on the sworn testimony of both parties and the documentary evidence filed by the tenant, I find that the landlord was notified of the tenant's forwarding address on April 08, 2010.

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 date the forwarding address is received in writing.

I find 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 \$187.50 and is obligated under section 38 to return double this amount to the tenant. Therefore, I find that the tenant is entitled to \$375.00.

The tenant has also applied for the return of his rent. The tenant was evicted without notice on March 25, 2010. The tenant had already paid rent for the following month of April. I find that the landlord must return this rent to the tenant. Accordingly, the tenant has established a claim of \$375.00 for the return of rent for April. The tenant is not entitled to the return of rent for two months.

Overall, the tenant has established a claim for a total of \$750.00. I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount which represents double the security deposit and rent for April. 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 **\$750.00**.

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: October 18, 2010.

Dispute Resolution Officer