



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, his agent and the landlord.

In her documentary evidence, the landlord raised the issue of jurisdiction. The landlord states that "this lad just had a furnished room in a private home. Everything else was shared accommodations with myself...Under Section 4C of the landlord tenants act this is not something involving the landlord tenants."

Section 4(c) of the *Residential Tenancy Act (Act)* stipulates that this *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The parties agreed the tenant had a room with access to a kitchenette area and there was a washroom and shower in the basement of the house. The tenant acknowledged that often the landlord and others would come in the back door of the basement and use the washroom and that the landlord would use it to access her part of the house (the upstairs).

Section 4(c) specifically says the tenant shares the bathroom or kitchen facilities with the owner of the accommodation, however, neither party indicated that the tenant used the kitchen or bathroom facilities in the upstairs portion of the house that is attributed to the landlord's use only.

In addition, in the evidence the landlord has claimed cleaning to the rental unit including cleaning of the room; stove; fridge; shower and washroom in the amount of \$50.00. As a result, I find the landlord has acknowledged that the tenant was solely responsible for the condition of the kitchenette and basement washroom and shower facilities and I therefore accept jurisdiction in this matter.

A tenancy, defined in Section 1 of the *Act*, means a tenant's right to possession of a rental unit under a tenancy agreement. While generally tenants are granted exclusive

possession of a rental unit there is nothing that prevents a tenant from allowing the landlord to use parts of their rental unit for shared and/or common activities.

Issues(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order for double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began on April 28, 2010 as a month to month tenancy for a monthly rent of \$400.00 with a security deposit of \$200.00 paid. The parties could not agree on whether rent was due on the 1st or the 26th of the month.

The parties agree the tenancy ended on May 28, 2010 when the landlord bolted the tenant's access to the rental unit and removed items belonging to the tenant and took them to the tenant's grandmother's house and left them on her front lawn.

The parties also confirm that the tenant was provided a cheque by the landlord for \$150.00 for return of the majority of the security deposit to the tenant in early June 2010. The tenant did not cash the cheque for some time.

The landlord testified that when she received the Notice of Hearing documents from the tenant she thought that he must not have received the cheque and she put a stop payment on the cheque.

The tenant testified he deposited the cheque into his bank account on June 25, 2010 and that on July 5, 2010 he was notified that the cheque had not cleared as the landlord had placed a stop payment on it.

The landlord provided evidence and testimony confirming that on September 24, 2010 she paid \$150.00 to the Ministry of Housing and Social Development for the return of the tenant's security deposit.

Analysis

Section 38 of the *Act* requires a landlord to return a security deposit, less any mutually agreed upon deductions, to a tenant within 15 days of the end of the tenancy and receipt of the tenant's forwarding address. If the landlord fails to do so the landlord must pay the tenant double the amount of the security deposit.

I accept that the landlord had provided the tenant with a cheque well within the 15 day timeframe; however the cheque included a deduction of \$50.00 for cleaning without the tenant's consent.

Despite the fact the landlord provided the Ministry of Housing and Social Development with \$150.00, the landlord did not have a residential tenancy relationship with the Ministry and the Ministry is not authorized, under the *Act*, to act on the tenant's behalf and accept the return of a security deposit.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$250.00** comprised of \$150.00 for the portion the landlord attempted to return of the security deposit and \$100.00 for double the amount the landlord failed to return or file an Application for Dispute Resolution to claim against.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 26, 2010.

Dispute Resolution Officer