



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

I accept the tenant's testimony that despite the landlord having been served with the application for dispute resolution and notice of hearing by personal service on October 01, 201, in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing.

The tenant was given full opportunity to be heard, to present evidence and to make submissions. The tenant provided (one) 1 sheet document as evidence: a copy of a cheque from the landlord, purported to be a portion of the security deposit returned to the tenant. The tenant advised that they had not sent this evidence to the landlord.

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed facts before me, under affirmed testimony by the tenant, are as follows.

The tenancy began on January 21, 2010 and ended on August 31, 2010. The landlord collected a security deposit of \$547.50 at the outset of the tenancy. The parties conducted a move in inspection. There was no move out inspection conducted at the end of the tenancy. The tenant testified that they provided a written forwarding address which the landlord when they vacated – used by the landlord to provide the tenant with a cheque dated September 20, 2010, for a portion of the original security deposit in the amount of \$360.61 (representing \$61.89 for unpaid Hydro and \$125 for cleaning.)

Analysis

On preponderance of the undisputed testimony of the tenant, and on the balance of probabilities, I have reached a decision. I accept the tenant's testimony in respect to receiving a cheque from the landlord in the amount of \$360.61 and dated September 20, 2010 - as return of the security deposit from the landlord.

Section 38(1) of the Act provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord returned \$360.61 to the tenant and retained \$186.89 of it. The landlord was obligated under section 38 to return all of the security deposit of \$547.50. Under section 38 of the Act, the amount which is doubled is the \$547.50 original amount of the deposit, with no interest accrual. As a result I find the tenant has established an entitlement claim for **\$1095**. The amount of \$360.61 returned by the landlord is appropriately deducted from this entitlement. The tenant is further entitled to recovery of the **\$50** filing fee for a total net entitlement of **\$784.39**.

Conclusion

I grant the tenant an order under section 67 for the sum of **\$784.39**. If necessary, this order may be filed in the Small Claims Court 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*.