

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit and the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issue to be Decided

Is the tenant entitled to the return of double the security deposit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on September 01, 2009 and ended on August 31, 2010. Prior to moving in the tenant paid a security deposit of \$767.50. The tenancy agreement is signed by the tenant and a co tenant. The co tenant moved out shortly after the tenancy started.

In a signed document, the tenant allowed the landlord to retain a portion of the security deposit and return the balance of \$441.36. On September 20, 2010 the tenant gave the landlord his forwarding address in writing and the landlord mailed a cheque to the tenant in the amount of \$441.36 shortly after.

The landlord made the cheque payable to both the tenant and the co tenant. The tenant was unable to cash the cheque and requested the landlord to amend the cheque to allow either tenant to cash the cheque. The landlord refused to do so until she received permission in writing from the co tenant.

The tenant was unable to contact the co tenant and this resulted in the tenant being unable to cash the cheque for the remainder of the security deposit

Analysis

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 later of the end of the tenancy and the date the forwarding address is received in writing.

I find that the landlord repaid the security deposit to the tenant within 15 days of receiving the tenant's forwarding address and is therefore not liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit. However, the tenant was unable to cash the funds as it was made out in the names of the tenant and the co tenant.

Section 13 of the *Residential Tenancy Policy Guideline* clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement.

Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants.

The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Based on Section 13 of the *Residential Tenancy Policy Guideline*, the landlord may return the security deposit to one tenant and it is the responsibility of that tenant to apportion to the co tenant.

Accordingly, I order the landlord to return the balance of \$441.36 to the tenant. Since the tenant has proven his case he is also entitled to the recovery of the filing fee

Conclusion

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$491.36**, which represents the balance of the security deposit plus the filing fee of \$50.00. 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*.

Dated: February 08, 2011.

Residential Tenancy Branch