

DECISION

Dispute Codes MNDC, FF

Introduction

This is an application by the Tenant for a monetary order for the return of double the portion of the security deposit that was withheld without consent and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave affirmed testimony.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

This tenancy began on June 1, 2009 on a fixed term tenancy until May 31, 2010. The monthly rent was \$730.00 as shown on the signed tenancy agreement filed by the Tenant. The Tenant paid a \$365.00 security deposit on June 1, 2009.

The Tenant states that he served the Landlord's agent in person on October 20, 2010 with the notice of hearing and evidence package. The Landlord does not dispute this.

The Tenant was served with a notice of rent increase on February 3, 2010 to be effective June 1, 2010. The Tenant filed a notice to vacate for June 1, 2010 signed and received on April 23, 2010. The Landlord retained \$275.00 from the Tenant as a "break lease fee". The signed tenancy agreement shows that, "A \$275.00 break lease fee will be applied on terms less than 1 year, not to be misunderstood as a penalty but the cost of re-rental latent damage and advertising."

The Tenant states that he does not remember when he gave his forwarding address in writing, but that the Landlord on a document dated May 31, 2010 provided to the Tenant is noted as having it. This notice also displays the notice date and the effective date of ending the tenancy. The Tenant states that he was returned \$90.00 by cheque as per the notice and has yet to cash it.

Analysis

Based upon the above facts, I find that the Landlord was properly served with the notice of hearing and evidence package as stated by the Tenant's evidence and the Landlord has confirmed this.

I find that the Landlord has improperly held \$275.00 as a break lease fee, when the Tenant did in fact complete the 1 year fixed term tenancy. The Tenant has properly given notice to end the tenancy as well as provide the Landlord with his forwarding address in writing as shown on the Landlord's notice to the Tenant. The Landlord admits to not filing an application for dispute resolution to retain the deducted amount of \$275.00. I find that the Tenant has established a claim for return of double the security deposit. I find in this case however, that since the Landlord did return \$90.00 to the Tenant, that the amount of \$275.00 held by the Landlord is to be doubled instead of the full \$365.00. The Tenant is entitled to \$550.00 along with \$50.00 for being successful in his application. The Tenant is granted a monetary order under section 67 for the balance due of \$600.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$600.00.

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: February 21, 2011.

Residential Tenancy Branch