



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC

Introduction

This conference call hearing was convened in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the Act; and for the return of all or part of the security deposit.

The tenant participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing in person to the landlord at the landlord's residence on November 4th, 2010. The landlord did not participate and the hearing proceeded in the landlord's absence.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The rental unit consists of a basement suite in a single family home. Pursuant to a written agreement, the month to month tenancy started on August 1st, 2010 and ended on August 16th, 2010. The monthly rent of \$550.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$275.00.

The tenant testified that from the start of the tenancy the bathroom toilet was noisy and kept running and bubbling continuously. She said that the landlord told her that he would have it fixed but that did not occur. The tenant said that one day she flushed the toilet and it overflowed. She said that she had no shut off valve and that by the time the landlord intervened, her basement was flooded in 2 inches of sewage water. The tenant said that she was forced to move out; in her documentary evidence, she provided a copy of a written notice dated August 24th, 2010 to the landlord with her forwarding address.

I.C., the tenant's advocate, clarified that the tenant miscalculated the monetary claim for double the amount of the security deposit, and amended the amount to \$550.00. She also stated that on January 14th, 2011, she sent the landlord a package of evidence by regular mail in reference to this hearing.

Analysis

I accept the tenant's undisputed testimony that she served the landlord with the Notice of Dispute Resolution in a proper manner pursuant to the *Residential Tenancy Act*. I find that the landlord knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 38(1) of the *Residential Tenancy 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 landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

The landlord in this matter did not make an application for dispute resolution. Accordingly, I find that the tenant fulfilled her statutory obligations and that she is entitled to the return of double the amount of her security deposit.

Conclusion

Pursuant to Section 67 of the Act, I grant the tenant a Monetary Order for the sum of \$550.00. This Order may be registered 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: March 08, 2011.

Residential Tenancy Branch