



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a Monetary Order for the return of the security deposit, and to recover the filing fees associated with this application.

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's wife 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 the return of her security deposit, and for what amount?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenant testified that the rental unit consists of a two bedroom basement suite which the tenant occupied with her son, and that they are both handicapped. The tenant stated that pursuant to a written agreement, the month to month tenancy started in September 2007 and ended on August 1st, 2010. The monthly rent of \$850.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$500.00.

The tenant stated that as an incentive to move out immediately, the landlord promised to return the tenant's \$500.00 security deposit. The tenant said that the landlord held back \$100.00 from that amount for work that the tenant's son would have to do in the landlord's back yard. In her documentary evidence, the tenant submitted a copy of the \$400.00 cheque issued by the landlord, and a letter from the bank notifying the tenant that the landlord made a stop payment on the cheque. The tenant said that her son worked for two hours in the yard but was never compensated.

The tenant stated that she has tried to contact the landlord since, but that he has ignored all messages that she has left.

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. The tenant testified that she gave the landlord verbal notice of her forwarding address. Her forwarding address was also on the application for dispute resolution that she served on the landlord.

Based on the available evidence, I find that the landlord did not act in good faith when he stopped payment of the security deposit. I accept the tenant's evidence and I am satisfied that the landlord received the tenant's forwarding address when he was served with the application for dispute resolution.

Accordingly, I find that the tenant is entitled to the return of her security deposit and the filing fee.

Conclusion

Pursuant to Section 67 of the Act, I award the tenant a monetary order for the sum of \$550.00, which consists of the security deposit and the filing fee. If necessary, 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 07, 2011.

Residential Tenancy Branch