



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double her security deposit and a cross-application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

The landlord stated that he had served both the Residential Tenancy Branch and the tenant with a evidence showing a monetary breakdown of his claim. Neither the tenant nor I had that document. The landlord was willing to adjourn the hearing and reserve the document but the tenant asked that the hearing proceed as scheduled. The tenant clearly understood the details of the landlord's claim and I found that she was not prejudiced by not having advance notice of the claim, so the hearing proceeded.

Issues to be Decided

Is the tenant entitled to an order for the return of double her security deposit?
Is the landlord entitled to a monetary order?

Background and Evidence

The parties agreed that the tenancy began in June 2010 at which time the tenant paid a \$575.00 security deposit and ended on August 31, 2010. The parties further agreed that the tenant gave the landlord her forwarding address on September 1 and that her agent, A.K., completed the condition inspection together with the landlord.

The landlord testified that the tenant failed to pay her \$1,150.00 rent, \$50.00 for parking, \$25.00 in late payment fees and \$25.00 for an NSF fee in August. The tenant testified that she paid the rent and fees in cash by dropping the cash through the drop box at the landlord's office but did not receive a receipt. The landlord seeks to recover \$1,250.00 in unpaid rent and fees.

The landlord testified that the tenant failed to adequately clean the rental unit at the end of the tenancy and that 5 hours were spent cleaning at a cost of \$20.00 per hour. The landlord relied on the condition inspection report which was signed by A.K. and on which A.K. agreed that the report fairly represented the condition of the rental unit. The report indicated that the walls, floors, cabinets and doors in almost every room required cleaning and that the appliances required cleaning as well. A.K. testified that he cleaned the unit and that he did not agree with the report, but that he felt pressured to sign the report. When asked why he felt pressured, he said there was a lot of discussion about whether August rent had been paid and he felt pressured by that discussion. The landlord testified that he did not pressure A.K. to sign the report, he gave A.K. opportunity to speak with the tenant on the telephone and he pointed out that the tenant could sign the form without agreeing with its content. The landlord seeks to recover \$100.00 as the cost of cleaning.

Both parties seek to recover their filing fees.

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 the landlord received the tenant's forwarding address on September 1 and I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit. I award the tenant \$1,150.00 which represents double her security deposit and an additional \$50.00 which represents the filing fee paid to bring her application.

As for the landlord's claim, when a landlord alleges that rent has not been paid, the burden rests with the tenant to prove that rent has in fact been paid. The tenant was unable to provide any evidence to corroborate her claim that rent and the additional fees had been paid and I find that she has failed to meet her burden. I award the landlord \$1,250.00 which represents rent and fees for August.

I do not accept the tenant's assertion that A.K. was pressured to sign the condition inspection report. The fact that A.K. was able to converse with the tenant during the condition inspection report and the fact that he took the time to write on the report his disagreement with the landlord's assertion that August rent was unpaid have persuaded me that the tenant was well aware that he could voice his disagreement and he chose not to do so. I find it more likely than not that the unit required additional cleaning and I

award the landlord \$100.00. I also award the landlord an additional \$50.00 for the filing fee paid to bring his application.

Conclusion

The tenant has been awarded \$1,200.00 and the landlord has been awarded \$1,400.00. I find it appropriate to set off the awards as against each other which leaves a balance of \$200.00 owing by the tenant to the landlord. I grant the landlord a monetary order under section 67 for \$200.00. This order may be filed in the Small Claims Division of the Provincial 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 01, 2011

Residential Tenancy Branch