



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 a monetary order. The tenant testified that he served the landlord with the application for dispute resolution and notice of hearing via registered mail on or about November 2, 2010. I found that the landlord was properly served with application for dispute resolution and notice of hearing and the hearing proceeded in her absence.

At the outset of the hearing the tenant advised that while he had originally applied for almost \$5,000.00 which represented return of a rental payment, double his security deposit and the deposit for his access fob, he had since received repayment of the rent, the fob deposit and \$1,050.00 of his deposit. The tenant amended his claim to claim just the doubling penalty under section 38 of the Act, the \$100.00 withheld by the landlord and the \$50.00 filing fee paid to bring his application.

Issue to be Decided

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

Background and Evidence

The undisputed facts before me are as follows. At the outset of the tenancy the landlord collected a security deposit of \$1,150.00. On September 18, 2010 the tenant vacated the rental unit and on October 4, the tenant gave the landlord his forwarding address in writing and requested the return of the security deposit.

The landlord returned all but \$100.00 of the security deposit in a cheque dated December 1, 2010.

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 October 8, 5 days after it was mailed, 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.

I find that the landlord wrongfully withheld \$100.00 of the security deposit. The landlord is not entitled under the Act to arbitrarily retain any portion of the deposit, but must obtain either the tenant's consent or an order from a dispute resolution officer.

I find that the tenant is also entitled to recover the filing fee paid to bring his application and I award him \$50.00.

Conclusion

I grant the tenant an order under section 67 for \$1,300.00, which sum includes the aforementioned section 38(6) penalty, the \$100.00 which was wrongfully withheld and the \$50.00 filing fee. 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: March 03, 2011

Residential Tenancy Branch