



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenants only. The landlord did not attend.

The tenant provided confirmation that they served the landlord with notice of this hearing via registered mail on December 7, 2010. I find the landlord has been served sufficiently with notice of this hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit; compensation for a heater and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on May 1, 2010 as a month to month tenancy for a monthly rent of \$650.00 due on the 1st of the month and a security deposit of \$400.00 was paid.

The tenant submitted a copy of a letter from the landlord dated November 8, 2011 outlining her intention to deduct \$241.46 from the \$400.00 security deposit for carpet cleaning; washroom repair; changing locks; and paint and wall damage. The landlord calculated the balance of the security deposit to be \$158.54 and provided the tenant with a cheque for \$165.00. The tenant testified that he has not cashed this cheque.

The tenant testified he had loaned the landlord a heater as one of the neighbouring tenants was without heat and the landlord never returned the heater. The tenant states that he purchased the heater about 10 years ago for \$50.00. The tenant has provided no documentary evidence confirming any of this portion of his claim.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenants forwarding address in writing, return the security deposit less any mutually agreed upon (in writing) deductions or file an Application for Dispute Resolution to claim against the deposit for any damages or losses owed by the tenant.

As per the testimony and the evidence before me, I find that, while the landlord did provide the return of some of the security deposit, she did not have the tenant's written consent to withhold any funds and therefore the landlord has failed to comply with Section 38(1).

Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit. As I have found the landlord failed to comply with Section 38(1) I find the landlord is required to pay the tenant double the security deposit in accordance with Section 38(6).

As there is no ability to determine if the cheque received by the tenant in November 2010 from the landlord is still negotiable, I order the tenant to destroy this cheque.

I find the tenant has failed to provide sufficient evidence to substantiate his claim for his space heater and I dismiss this portion of his application.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$850.00** comprised of \$800.00 double the amount of the security deposit owed and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: April 11, 2011.

Residential Tenancy Branch