



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for the return of the security deposit and to recover the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

The tenancy started on May 01, 2010 and ended on September 30, 2010. In this case, the landlord sublet a portion of the rental unit to the tenant. The monthly rent was \$415.00.

The landlord had entered into a fixed term tenancy agreement with the owner of the rental property. She shared the rental unit with a roommate. When her roommate moved out, she sublet the roommate's portion of the rental unit to this tenant. The tenant paid a security deposit of \$210.00. This amount was given to the departing roommate who had paid his security deposit to the owner. The tenant paid her share of rent to the landlord by cheque.

The landlord decided to move out at the end of August 2010 thereby breaking her lease with the owner. The tenant stayed for the month of September 2010. Since she had paid her rent by post dated cheques to the landlord, her cheque for September was cashed by the landlord. The landlord returned \$215.00 of the rent to the tenant and explained to her that this was her security deposit.

She gave the owner of the rental unit, the balance of \$200.00 on the tenant's behalf. Since the owner had only \$200.00 for rent for the tenant, the tenant paid the balance of \$215.00 directly to the owner in the absence of the landlord.

The landlord had ended the fixed term tenancy prior to the end date. The owner and the landlord agreed that the owner would keep the security deposit as liquidating damages for ending the fixed term prior to the end date.

On October 02, 2010, the tenant gave the landlord her forwarding address in writing with a request for the return of the security deposit. The landlord responded by saying that she had already returned half month's rent from the rent cheque that she had cashed on August 27, 2010. The landlord understood that she did not owe the tenant any money as the security deposit was already paid to her. The tenant filed for dispute resolution.

Analysis

Section 38 (1) of the *Residential Tenancy Act* states that within 15 days after the later of the date the tenancy ends or the date that the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make an application to claim against the security deposit.

In this case, I find that the tenancy ended on September 30, 2010, and that the tenant provided the landlord with a forwarding address in writing, on October 02, 2010. The landlord did not repay the security deposit nor make an application for dispute resolution within 15 days of the date that the tenant provided the landlord with a forwarding address.

However, the landlord understood that she had returned the security deposit and therefore did not apply to keep it. Based on the testimony of both parties, I find that the landlord owed the owner money for having ended the fixed term tenancy prior to the end date. She agreed to allow the owner to retain the security deposit.

However, a portion of the deposit belonged to the sub tenant and it was the responsibility of the landlord to return it to her. Even though the landlord states she returned \$215.00 from the tenant's rent to her, in doing so she simply redirected the rent to the owner via the subtenant. I find that the landlord used the amount of the security deposit to satisfy her personal obligation to the owner. Therefore the landlord owes the tenant the amount of the security deposit.

Since the tenant has proven her case she is also entitled to the recovery of the filing fee of \$50.00.

Conclusion

I hereby grant the tenant an order under section 67 of the *Residential Tenancy Act*, for the total of **\$260.00**. 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: June 13, 2011.

Residential Tenancy Branch