



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double the security deposit, return of the key fob deposit and parking fees that were to be returned.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard testimony that the parties entered into a fixed term tenancy agreement that began on either January 29, 2008 or February 1, 2008 and switched to a month to month tenancy after January 31, 2009. Rent was payable on the first of each month in the amount of \$2,350.00 and on January 29, 2008 the Tenant paid \$1,125.00 as the security deposit and \$75.00 towards the key fob deposit. A move in inspection report was conducted on January 29, 2008 and a move out inspection was conducted on February 5, 2011.

The Tenant testified that when he provided his notice to end his tenancy in early January 2011 he was advised by the Landlord that they were responsible for rent until the end of February 2011. He stated that he understood his legal requirement to pay rent until the end of February 2011 and requested that his tenancy end when they conducted the move out inspection and returned the keys. He paid the February 2011 rent in full and provided his forwarding address in writing on the move out inspection form on February 5, 2011. He agreed, in writing, for the Landlord to retain \$270.00 from his security deposit to cover the cost of cleaning the carpets and window coverings and requested that his security deposit be returned as soon as possible.

He stated the Landlord refused to return his deposit until after February 28, 2011 so he filed an application for dispute resolution for the return of double his security deposit. Then he received a letter dated February 25, 2011 with a cheque in the amount of \$1,021.88 which represented the return of his \$1,125.00 security deposit, the \$75.00 key deposit, \$75.00 for parking, \$16.88 interest, less the \$270.00 he previously agreed the Landlord to retain. He is of the opinion that the Landlord failed to return his deposit within 15 days of his tenancy ending and therefore he is still entitled to return of double his security deposit.

The Landlord testified and confirmed the details of the tenancy agreement and move out inspection report. She stated that the Tenant did attend the move out inspection and did return the keys on February 5, 2011 and based on their interpretation of section 38 of the *Residential Tenancy Act* they returned his deposit within the required time frame. She is of the opinion that the tenancy does not end until the Tenant's legal obligation ends and therefore they were not required to return the deposit until 15 days after February 28, 2011.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act*.

The evidence supports the Landlord regained possession of the rental property on February 5, 2011 after the move out inspection was conducted and the keys were returned from the Tenant.

Section 44 (1)(d) stipulates that a tenancy ends if the tenant vacates or abandons the rental unit.

The issue before me is based on the interpretation of the *Residential Tenancy Act* as to when the tenancy ended, not when the legal obligations of the agreement ended.

In this case I find the tenancy ended February 5, 2011, in accordance with section 44 (1)(d) of the Act as this is the date the Landlord regained possession of the vacant rental unit. The Tenant provided his forwarding address in writing on the move-out inspection report on February 5, 2011.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than February 20, 2011. The evidence supports the Landlord did not mail the return of the security deposit until February 25, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the Act and that the Landlord is now subject to Section 38(6) of the Act which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find that the Tenant has succeeded in meeting the burden of proof and I approve his claim for the return of double the security deposit.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

| | |
|---|-------------------|
| Double the Security Deposit (2 x \$1,125.00) | \$2,250.00 |
| Interest owed on \$1,125.00 from Jan 29/08 to June 14, 2011 | 15.58 |
| Key Fob deposit \$75.00 plus interest \$1.04 | 76.04 |
| Return of parking fee for February 2011 | <u>75.00</u> |
| Subtotal (Monetary Order in favor of the Tenant) | \$2,416.62 |
| LESS deduction amount agreed to by Tenant | -270.00 |
| LESS payment sent February 24, 2011 | <u>-1,021.88</u> |
| TOTAL OFF-SET AMOUNT DUE TO THE TENANT | \$1,124.74 |

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$1,124.74**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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 14, 2011.

Residential Tenancy Branch