



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for the return of the security deposit and to recover the filing fee associated with this application.

By the landlord: as an application for a Monetary Order for damage to the unit and money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; for damage to the unit; to keep the security deposit; and to recover the filing fee associated with his application.

The tenant participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing to the landlord by way of registered mail, for which Canada Post notified her that delivery of the package was refused. The landlord did not call in to the conference call; accordingly the landlord's application is dismissed without leave to reapply and the hearing under the tenant's application proceeded in the landlord's absence.

Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of the upper level of a garage. Pursuant to a written agreement, the tenant testified that the tenancy started on May 1st, 2010. The rent was \$1050.00 per month and the tenant paid a security deposit of \$525.00. The tenant stated that she ended the tenancy and gave the landlord proper notice on January 15th, 2011, and her forwarding address in writing on February 28th, 2011.

In her documentary evidence, the tenant provided copies of the notice of her forwarding address, and of the notice to end tenancy effective March 1st, 2011. She stated that the landlord has not returned the security deposit to date.

Analysis

I accept the tenant's undisputed testimony that she served the landlord with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. Refusing delivery of registered mail does not discharge a party's obligation regarding this dispute. Further, the landlord made his own application for dispute resolution on March 21st, 2011 and I find that the landlord ought to have had knowledge of the date scheduled for this hearing.

Section 38(1) of the *Residential Tenancy 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 landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

On the evidence I find that the landlord did not comply with the statutory timeline. The tenant gave him her forwarding address on February 28th, 2011; therefore the landlord should have returned the security deposit or made an application for dispute resolution by no later than March 15th, 2011.

Accordingly the tenant is entitled to the return of double the amount of her security deposit.

Conclusion

Since the tenant was successful in her application, she is entitled to recover the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the tenant a monetary order for the sum \$1100.00.

This Order may be registered 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: July 04, 2011.

Residential Tenancy Branch