



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double his security deposit and a cross-application by the landlord for a monetary order and an order permitting her to retain the security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Should the landlord be ordered to return double the security deposit?
Is the landlord entitled to a monetary order?

Background and Evidence

The parties agreed that they entered into a written tenancy agreement which provided that the tenancy was to begin on May 29, 2011 and continue for a fixed term of one year. They further agreed that the tenant paid a \$530.00 security deposit. Early in May, the tenant advised the landlord that he would not be able to move into the rental unit. The tenant testified that he understood that the landlord would retain his security deposit if she was unable to find a new tenant and when he learned that the rental unit had been re-rented, he gave his forwarding address to the landlord via registered mail and requested that the deposit be returned. The tenant seeks an award of double the security deposit as the landlord did not file a claim within 15 days of having received his forwarding address.

The landlord denied having received the tenant's forwarding address. Although the Canada Post records show that a registered letter was received by a "*" on June 1, she claimed that someone else must have picked up the letter. The landlord made an application for dispute resolution on August 25, 2011.

The landlord testified that she found a new tenant, but the new tenant did not move into the unit until June 15, 2011 and the landlord therefore lost \$560.00 in rental income for the month of June. The landlord seeks to recover the lost income as well as \$195.00 in

wages which she claimed were lost because she had to spend time advertising and showing the rental unit and a further \$95.00 in other expenses such as gas, parking and mailing documents with respect to filing her claim and responding to the tenant's claim.

Analysis

I find that on June 1 the landlord received the tenant's forwarding address sent by registered mail. I have arrived at this conclusion because I find it unlikely that a third party would be able to produce identification for Canada Post to collect the letter. I find that it is more likely that the post office simply recorded the landlord's name incorrectly in their records.

I find that the landlord failed to return the security deposit or file a claim against it within 15 days of having received the forwarding address and I find that the tenant is therefore entitled pursuant to section 36(6) of the Act to an award of double the security deposit. I award the tenant \$1,060.00.

I find it more likely than not that the landlord re-rented the unit for June 15, 2011. I accept the written statement of the new tenant as genuine and I find that the landlord is entitled to recover from the tenant \$560.00 in lost income. I award the landlord \$560.00.

I dismiss the landlord's claim for lost wages. The landlord is operating a business and must expect that the operation of this business will require her to spend time securing a new tenant. The landlord is not entitled to recover such costs from tenants, but is free to build those costs into rent charged so that she is compensated for her time.

The claim for expenses related to filing her claim is also dismissed as under the Act, the only litigation related expense I am empowered to award is the cost of the filing fee.

Both parties seek recovery of their filing fees. As both have enjoyed some success, I find it appropriate that each bear the cost of their own fees.

Conclusion

The tenant has been awarded \$1,060.00 and the landlord has been awarded \$560.00. Setting off these claims against each other leaves a balance of \$500.00 owed by the landlord to the tenant. I grant the tenant a monetary order under section 67. This order may be filed in the Small Claims Division of the Provincial 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: September 29, 2011

Residential Tenancy Branch