



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF
 MNSD, FF

Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the tenant is for return of double the security deposit, to order the landlord to comply with the Act and recovery of the filing fee. The application by the landlord is to keep all or part of the security deposit. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This tenancy started in October 2009 with monthly rent of \$650.00 and the tenant paid a security deposit of \$325.00.

Matters related to this tenancy were previously heard June 23, 2011 under files 773587 and 773613.

Landlord's Claim

The landlord testified that the tenant did not pay the June 2011 rent, gave the landlord notice on June 14th to vacate and vacated the rental property on June 15th. The landlord stated that he was not able to secure a tenant for July and suffered a loss of rental income. The landlord maintained that as the tenant had not given him proper notice he was entitled to keep the tenant's \$325.00 security deposit.

The tenant testified that the June rent had been dealt with in the June hearing and the landlord awarded June's rent. The tenant then went on to state that the landlord did not suffer a loss of rental income for July as the city had deemed the rental unit as illegal and had the landlord remove the kitchen appliances and sink. The tenant said that it would have been impossible for a tenant to live in the lower unit as a rental unit.

The landlord responded by stating that he now had roommates in the residence and that the woman who lived downstairs in what was the tenant's rental unit, now uses the kitchen upstairs where the landlord resides.

The landlord in this application is seeking \$325.00 for the tenant not providing proper notice.

Tenant's Claim

The tenant stated that she had provided the landlord with an email on or around June 24th requesting the landlord use the dispute address as her forwarding address as the tenant was having her mail forwarded by Canada Post.

The tenant stated that the landlord had still not returned her shower head per the previous decision and that she was claiming compensation for the shower head. The landlord agreed to place the tenant's shower head in the car port near the recycling so that the tenant could come and pick it up.

The tenant in this application is seeking return of double the security deposit and \$33.59 compensation for the shower head.

Analysis

Landlord's Claim

Based on the documentary evidence and testimony I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to a monetary order to keep the tenant's security deposit.

The landlord's application notes unpaid rent for June however the June rent was addressed in the prior hearing and awarded to the landlord. And as the landlord no longer rents the lower unit as a self contained rental unit, the landlord is not entitled to a loss of rental income for the month of July.

The landlord's application is dismissed without leave to reapply.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

Tenant's Claim

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to return of the original amount of the security deposit. The tenant advised the landlord on or around June 24th of her forwarding address by email and the landlord made application to claim against the security deposit on July 8th. Therefore the landlord

complied with the 15 day time limit specified in section 38 of the *Act* and the tenant is not entitled to double the security deposit.

Accordingly I find that the tenant is entitled to a monetary order for \$325.00.

In the previous hearing the landlord was ordered to return the shower head to the tenant and the landlord has agreed in this hearing to place the shower head in the carport where the tenant may come pick it up. However as the landlord **did not comply with the Order** from the previous hearing and return the shower head the tenant will be awarded this \$33.59 portion of her claim.

Accordingly I find that the tenant is entitled to a monetary order for \$33.59.

The tenant stated that there is a monetary award to the landlord for \$184.68 which is outstanding and the award to the tenant will be set off by this amount.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

The total award to the tenant is \$408.59. The amount of \$184.68 will be deducted from this amount resulting in a balance of \$223.91 for which the tenant will be provided a monetary order however the landlord is to return the amount of \$223.91 to the tenant no later than October 21, 2011.

Conclusion

I find that the tenant has established a monetary claim for **\$408.59** less the \$184.68 owed to the landlord. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order under section 67 of the *Act* for **\$223.91**

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: October 4, 2011.

Residential Tenancy Branch