



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This conference call hearing was convened in response to the tenant's application for the return of the security deposit.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

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

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the tenancy started in 2005. The rent was \$1850.00 per month and the tenant paid a security deposit of \$925.00.

The tenant testified that the landlord kept \$512.64 from his security deposit for repairs claimed against the tenant. The tenant said that he received a cheque for the balance of \$445.09. He states in his application that a condition inspection was not completed at the end of the tenancy; that he did not agree with the damages; and that he seeks the return of the balance of \$512.64. The tenant stated that he left the unit on May 31st, and gave the key and an envelope with his forwarding address to the landlord's 12 year

old son. The tenant stated that he met the landlord's wife approximately 3 weeks later at a Safeway store, and that she stated that she had misplaced the forwarding address. The tenant further stated that he sent his application for dispute resolution by registered mail on July 27th, 2011.

Aside from damages the landlord claims were caused by the tenant, the landlord testified that he did not receive the envelope in question, and that he cannot answer for the tenant's conversation with his wife regarding the security deposit. The landlord did however acknowledge receipt of the tenant's application for dispute resolution.

Analysis

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(4) of the Act also states in part that a landlord may retain an amount from a security deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

In this matter the landlord returned a portion of the security deposit after deducting repairs which he claims were caused by the tenant. Section 60(1) of the Act provides for a landlord to make an application for dispute resolution over matters related to the tenancy within two years after the tenancy ends. The landlord is entitled to claim monetary compensation against the tenant for any damages alleged, and to submit evidence at that time. I am satisfied on the evidence that the landlord received the tenant's forwarding address in writing, at the very least when he received the tenant's application for dispute resolution. That package was sent by registered mail on July 27th and is deemed to be received 5 days later. The landlord did not file for dispute

resolution and he was not entitled to deduct any amount of the security deposit without the tenant's written consent.

Based on the above the tenant is entitled to the return of the amount deducted from his security deposit.

Conclusion

The tenant established a claim of \$512.64. Since he was successful the tenant is entitled to recover the filing fee for a claim totalling \$562.64. Pursuant to Section 67 of the Act, I grant the tenant a monetary order for sum of \$562.64.

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: October 31, 2011.

Residential Tenancy Branch