



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. The tenant also requested recovery of the filing fee. Although served with the Application for Dispute Resolution and Notice of Hearing sent by registered mail on August 29, 2011 the landlord failed to attend the hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on May 1, 2011 and ended on July 26, 2011. The rent was \$395.00 per month. The tenant paid a security deposit of \$200.00 at the start of the tenancy. The tenant provided the landlord with his forwarding address in writing on August 4, 2011. The tenant did not consent in writing to the landlord keeping all or any part of his security deposit. The tenant has not received any of his deposit back.

The circumstances surrounding the end of this tenancy were bizarre, to say the least. There had been five tenants all residing in one rental unit and the landlord T was actually a tenant himself but was sub-letting to the other five people. Mr. T was sub-letting to these five other people without the consent of the head landlord. The tenant provided photos of Mr. T making illegal keys out of a silicone rubber compound. The tenant also provided photos showing that each tenant had a 'space' in the unit that was cordoned off by curtains and was approximately 3 feet by 6 feet in size. In any event, on July 26th at midnight one of the tenants came home to find that Mr. T had removed all the furniture from the rental unit and spread broken glass and tacks all over the floor. When the other tenants confronted Mr. T – he ran to the bathroom and started smoking marijuana. The tenants called the police and Mr. T was put in hand cuffs and told not to return to the rental unit until all the tenants had safely vacated the unit.

Mr. M testified that Mr. T also stole his suit and two ties. A photo was provided of the tenant wearing the suit which he claims was stolen.

The landlord did not submit any evidence.

Analysis

The tenant has made a total claim of \$865.83 comprised as follows:

Double security deposit	\$400.00
Rent return (for final 5 days of July)	\$65.83
Value of suit	\$400.00
TOTAL	\$865.83

I will deal with each of these claims in turn.

Security Deposit - Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the entire security deposit to the tenant or file an application for dispute resolution claiming against the deposit. In the present case, the landlord has done neither.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord may not make a claim against the deposit and must pay the tenant double the amount of the security deposit. I am therefore satisfied that the tenant has established this portion of his claim.

Rent refund – The tenant had to leave the rental unit five days early under unexpected circumstances. The tenant has claimed \$65.83 for those five days however my calculations say that five days of rent is equal to \$64.51. Accordingly, I am satisfied that the tenant is entitled to that amount in rent back from the landlord.

Suit and ties – This portion of the tenant's claim is more problematic. I accept the tenant's evidence that the suit and ties were stolen by the landlord but the tenant has not provided any evidence as to the value of the suit and ties. The tenant has only provided an estimate. Further, I note that the suit and ties were purchased in 2009. As a result, I am satisfied that the tenant is entitled to only half the amount claimed in respect of the suit and ties or \$200.00.

Conclusion

Based on the above, I order the landlord to pay to the tenant the sum of \$664.51. I further order that the landlord bear the \$50.00 cost of this application for a total monetary order of \$714.51. This order may be filed in 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*.