



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 21, 2011. Mail receipt numbers were provided by the landlord in evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that he had an advertisement in the paper for his rental; unit. This prospective tenant asked to rent the unit and an agreement was reached between them. The tenant gave the landlord a cheque for \$450.00 for the security deposit which the landlord put into his bank. The landlord testifies that later he saw an advertisement for his rental unit in the paper and realized the tenant was attempting to split the unit and rent an illegal suite from the unit. The landlord testifies as this was not allowed as the rental unit was a single family home. The landlord states he contacted the tenant and explained he could not rent an illegal suite from the rental unit. The landlord testifies that they mutually agreed to end the tenancy and the landlord gave the tenant a cheque for \$450.00 to return his security deposit.

The landlord testifies the tenant cashed the landlord's cheque and the landlord later discovered the tenant's security deposit cheque was uncleared at the landlord's bank as there were insufficient funds available to honour it (NSF).

The landlord testifies he made many attempts to talk to the tenant about this but the tenant did not return any of the landlord's calls or messages.

The landlord is seeking a Monetary Order for the return of \$450.00 and seeks to recover his \$50.00 filing fee from the tenant.

The landlord was given opportunity to provide a copy of his bank statements showing the tenants security deposit cheque was NSF and the landlord's cheque given and cashed by the tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the

tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

It is my decision that the landlord did return the tenant security deposit before he was notified by his bank that the tenants security deposit cheque was NSF. Consequently I find the landlord has established his claim for the return of the **\$450.00** he gave the tenant for his security deposit and the landlord has been issued with a Monetary Order for this sum pursuant to s. 67 of the Act.

As the landlord has been successful with his claim I find he is also entitled to recover the **\$50.00** filing fee paid for this proceeding from the tenant pursuant to s. 72(1) of the Act

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$500.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: December 12, 2011.

Residential Tenancy Branch