



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of her security deposit and for other reasons.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally by the Tenant to the Landlord's wife at their residence on October 6, 2011.

The Tenant appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Landlord, despite being served notice of this proceeding in accordance with the *Act*.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, and or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant affirmed she entered into a month to month tenancy agreement with the previous owner that began on August 1, 2010. Rent was payable on the first of each month in the amount of \$1,100.00 and she paid a security deposit of \$550.00 on June 29, 2010. The new owners purchased the house during her tenancy and occupied the upper level. The rental unit was a self contained suite on the lower level of the house.

The Tenant advised on July 11, 2011 she personally served the Landlord with written notice to end her tenancy on August 15, 2011, and this notice included her forwarding address. The Landlord informed her she could not end her tenancy mid month so she paid rent for the entire month of August 2011 and ended her tenancy as of August 31, 2011.

She attended a move out inspection on September 5, 2011 at which time she was only shown the last page of the move out inspection form and was asked to sign it. She stated they discussed the Landlord's request for money to clean the rental unit, to remove garbage, and for costs associated with damage to the lawn and that after their discussion the Landlord crossed off the inspection document the disposal of garbage and damage to lawn; however he did not initial the crossing out. They verbally agreed the Tenant would pay for cleaning the rental unit which they determined at that time to be \$60.00.

The Tenant said that around September 9, 2011 she received a cheque from the Landlord in the amount of \$78.77 with a list of deductions totalling \$471.23 none of which she approved in writing to be taken off her deposit, except for cleaning at \$60.00. She confirmed she has not cashed the \$78.77 cheque and she is seeking double the return of her deposit plus interest.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed testimony provided by the Tenant.

The evidence supports the tenancy ended August 31, 2011, the Tenant provided the Landlord with her forwarding address in writing on July 11, 2011, and the amount of the security deposit held is \$490.00 (\$550.00 - \$60.00 for cleaning).

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than September 15, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I find the Tenant has met the burden of proof to obtain a monetary order in the amount of **\$980.00** (\$490.00 x 2 + \$0.00 interest).

As the cheque for \$78.77 was not previously cashed, it is quite possible that it will now be considered stale dated. Therefore, I hereby order the Tenant to void that cheque and return it to the Landlord. If this cheque was cashed the amount is to be deducted off of the monetary award.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$980.00**. This Order is legally binding and must be served upon the Landlord.

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 15, 2011.

Residential Tenancy Branch