



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking return of a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on August 29, 2010 for a 1 year fixed term tenancy for a monthly rent of \$1575.00 due on the 1st of each month and a security deposit of \$787.50 was paid on August 29, 2010. The tenancy agreement included two tenants.

The tenant testified that the landlord's agent had completed the move out paperwork with him at the end of the tenancy and had provided him with a cheque for return of the full security deposit.

The tenant stated that when he tried to negotiate the check he was told that because there had been an alteration to the cheque it could not be cashed. The tenant testified that he discussed with the landlord's agent and provided him with a forwarding address in writing on September 1, 2011.

The landlord testified that she contacted the other tenant on September 13, 2011 by e-mail who asked to have the full deposit sent to him for which he provided the landlord with a different forwarding address. The landlord testified she sent the full security deposit to this second tenant on September 22, 2011.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Residential Policy Guideline 13 states that co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement and have equal rights under the tenancy agreement. The responsibility to apportion among themselves any returned security deposit amounts.

I accept the landlord returned the full security deposit to the other tenant in this tenancy, and as such, the matter to "split" the amount is a matter between the two tenants. However, as the landlord had this tenant's forwarding address, through her agent, on September 1, 2011 I find she had until September 16, 2011 to either file an Application for Dispute Resolution to claim against the deposit or to return the security deposit to either one of the tenants.

From her own testimony, I find the landlord failed to return any portion of the security deposit to either one of the tenants on or before September 16, 2011 in contravention of Section 38(1) and as such, the tenant is entitled to double the amount of the security deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$837.50** comprised of \$1575.00 double the security deposit and the \$50.00 fee paid by the tenant for this application, less \$787.50 security deposit returned by the landlord.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: January 09, 2012.

Residential Tenancy Branch