



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for a Monetary Order for double the security deposit and to recover the filing fee from the landlords for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on September 16, 2011. Mail receipt numbers were provided by the tenant during the hearing and after the hearing had concluded. The landlord 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 tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to recover double the security deposit from the landlord?

Background and Evidence

The tenant testifies that this month to month tenancy started on September 01, 2010. Rent for this unit was \$595.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$295.00 on August 06, 2010.

The tenant testifies that at the start of the tenancy the landlord did not conduct a move in condition inspection with him. The tenant states he gave the landlord written Notice to End Tenancy on April 30, 2011 effective on May 31, 2011. Within this written Notice the

tenant testifies he gave the landlord his forwarding address. The tenant states he moved from the rental unit on May 31, 2011 and as the postal strike was commencing with Canada Post he did not expect the landlord to return his security deposit to him within 15 days. The tenant states he did agree at the end of the tenancy that the landlord could deduct \$25.00 from his security deposit to clean the fridge.

The tenant testifies however, as the postal strike ended and he still had not received his security deposit he sent the landlord a message concerning it. He states he received an e-mail from the landlord who stated that the cheque had been sent to the tenant in June. The tenant states he told the landlord he did not receive this cheque. The tenant states on July 29, 2011 he sent another message to the landlord about his security deposit and to inform the landlord that if the deposit was not returned the tenant would have to take further action. The tenant also asked the landlord for additional compensation as he had waited so long for them to return his deposit. The tenant states the landlord threatened to place the tenant on a "No Renters List". The tenant states he then filed his application for Dispute Resolution.

Since that time the tenant has received three cheques from the landlord. The first cheque is date for June, 2011 but does not have a complete date. This was sent on June 29, 2011 for \$270.00 however the tenant was unable to cash this cheque due to the incomplete date. The next cheque was received by the tenant on August 04, 2011 for \$290.00 (this included \$20.00 in compensation for the delay in returning the tenants security deposit. The third cheque for \$290.00 was received on September 05, 2011.

The tenant states he has since moved again to a new rental unit but the landlord was made aware of the tenant's new address and the landlord posted the last of the three cheques to the door of the tenant's new rental unit.

The tenant states he has not cashed any of these cheques as the landlord did not return his deposit within the allowable time frame and still delayed returning his deposit after he again requested it in July, 2011.

The tenant intends to return these cheques to the landlord, as he is unsure if the landlord has put a stop on any of the cheques, and the tenant seeks a Monetary Order for double his security deposit plus the \$50.00 filing fee paid for this proceeding.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

While I accept there was a postal strike in place as this tenancy ended the landlord is still obligated to send a valid cheque to the tenant within 15 days of the end of the tenancy (this date being the later of the two dates). The cheque the tenant received was an invalid cheque due to the date and this was not received until June 29, 2011, 29 days after the tenancy ended. The other two cheques were not received by the tenant until August 2011.

I further find the landlord failed to conduct a move in condition inspection at the start of the tenancy. In failing to carry out this inspection with the tenant the landlord has extinguished their right to keep the security deposit pursuant to s.24 (2) of the *Act*. I refer the parties to the Residential Tenancy Policy Guidelines # 17 which deals with the security deposit and states, in part, that the right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- The landlord does not offer the tenant at least two opportunities for inspection as required by the *Act*, and/or
- having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.

Consequently the landlord had extinguished his right to obtain the tenants consent to keep part of the security deposit of \$25.00 to clean the fridge. Consequently, I find the tenant has established a claim for the return of double the security deposit of \$590.00 pursuant to section 38(6)(b) of the *Act* .

As the tenant had concerns about the cheques sent to him in the event the landlord has placed a stop on any of these cheques; It is my decision that the tenant must return these cheques to the landlord within three days of receiving this decision and the tenant has received a Monetary Order for double the security deposit of \$590.00 plus the \$50.00 filing fee pursuant to s. 72(1) of the *Act* to a total sum of **\$640.00**.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$640.00**. 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 01, 2011.

Residential Tenancy Branch