



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for the return and double the amount of the security deposit.

By the landlord: as an application for a Monetary Order for damage to the unit; and to recover the filing fee associated with his application.

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Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit as claimed?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a suite in a motel. Pursuant to a written agreement, the tenancy started in June 2010. Rent was \$850.00 per month, then reduced to \$775.00 per month the tenant moved into a different suite, and the tenant paid a security deposit of \$300.00.

The parties did not dispute that the tenant mailed a letter with her forwarding address on October 31, 2011, and that the landlord received the letter mid-November. The landlord testified that the male tenant admitted to smoking inside the first suite, and that therefore he kept \$200.00 as liquidated damages, and transferred the balance of \$100.00 as security deposit for the second suite.

During the hearing I referred the landlord to the previous Residential and Tenancy Branch decision and order dated January 27, 2012, in which the landlord had been awarded the \$200.00 liquidated damages clause for smoking. The landlord acknowledged having misread the decision.

Analysis

Concerning the landlord's claim; I find that this matter was heard during the previous hearing of January 27, 2012; therefore this aspect of the landlord's application has already been decided. On the basis of "rez judicata" I decline to hear previously heard evidence and no subsequent determination will be made. Accordingly, the landlord's application is dismissed.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

In this matter the landlord received the tenants' forwarding address mid-November 2011, and the Residential Tenancy Branch received the landlord's online application for dispute resolution on November 25, 2011. Since I accept that the landlord received the forwarding address mid-November, which is to say on or about November 15, I find that the landlord filed the application within 15 days. Therefore the tenant is entitled to the return of the security deposit but not double the amount.

Conclusion

As stated earlier the landlord's application is dismissed.

The tenant established a claim of \$300.00 and pursuant to Section 67 of the Act, I grant the tenant a monetary order for \$300.00.

This Order may be registered in the 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*.

Dated: March 08, 2012.

Residential Tenancy Branch