



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for the return of double the security deposit and to recover the filing fee paid for this proceeding from the landlord.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch.

Preliminary Issues

Both parties brought a witness to give testimony concerning service of the hearing documents to the landlord. The tenant and his witness testify that these hearing documents were served to the landlord by leaving them in the landlord's mail slot on March 05, 2012. The tenant testifies he also delivered additional evidence to the landlord on March 12, 2012 and this was given to an employee of the landlords. The landlord and the landlord witness testify that the hearing documentation was not found in the mail box until March 12, 2012. As the landlord agrees they have received the hearing documents I deem the documents to have been sufficiently served for the purpose of the *Residential Tenancy Act (Act)*.

Issue(s) to be Decided

Is the tenant entitled to the return of double the security deposit?

Background and Evidence

Both parties agree that this tenancy started on June 01, 2009. This became a month to month tenancy and the tenancy ended on June 30, 2011. Rent for this unit was \$1,108.52 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$525.00 on May 25, 2009. The landlord agrees they received the tenants forwarding address in writing on June 30, 2011.

The tenant testifies that the landlord returned \$385.00 from his security deposit in November, 2011 and withheld the balance of \$140.00 for cleaning. The tenant testifies he cleaned the unit and shampooed the carpets at the end of his tenancy and did not agree the landlord could keep any of the security deposit. The tenant testifies that a previous hearing was held on October 31, 2011 after the landlord had applied to keep the security deposit. However, the landlord did not attend at that hearing and the landlord's application was dismissed without leave to reapply. The tenant testifies that as the landlord has not returned the security deposit the tenant seeks to recover double the balance of the deposit plus the \$50.00 filing fee.

The landlord agrees they did apply to keep the security deposit but failed to appear at that scheduled hearing. The landlord testifies that they returned \$385.00 of the tenant's security deposit and the cheque was drawn on July 08, 2011 and was cashed by the tenant.

Analysis

I have carefully considered the sworn testimony of both parties and I refer the parties to Section 38(1) of the *Residential Tenancy Act (Act)* that says 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, whichever is the later date, 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.

Based on the above and the testimony presented I find that the landlord did receive the tenants forwarding address in writing on June 30, 2011 and the tenancy ended on that day. As a result, the landlord had until July 15, 2011 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and although the landlord did file an application for Dispute Resolution to keep the deposit the landlord failed to appear at that hearing and their application was dismissed without leave to reapply.

While I accept that the landlord did return \$385.00 of the tenants security deposit, within the 15 allowable days the *Act* is clear under section 38(1) and 38(6)(b) that unless the tenant has agreed in writing at the end of the tenancy that the landlord may keep all or part of the security deposit or the landlord has applied to keep the security deposit (and appeared at the hearing), then the landlord must return all of the security deposit. If the landlord fails to return all of the deposit then the tenant is entitled to have the full amount of the deposit doubled. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of \$1,050.00 and the amount returned to the tenant will be deducted from this sum pursuant to section 38(6)(b) of the *Act*.

As the tenant has been successful with their claim I find the tenant is also entitled to recover the \$50.00 filing fee. A Monetary Order has been issued to the tenant for the following amount:

Double the original security deposit	\$1,050.00
Less amount already returned	(-\$385.00)
Subtotal	\$665.00
Plus the filing fee	\$50.00
Total amount due to the tenant	\$715.00

Conclusion

I HEREBY FIND in favor of the tenants revised monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$715.00**. 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: March 16, 2012.

Residential Tenancy Branch