



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order pursuant to section 38(6)(b) of the Act. Both parties participated in the conference call hearing.

Although the tenant's claim included claims for the value of a smoke detector left in the unit and the cost of sending documents via registered mail, at the hearing the tenant's advocate confirmed that the claim was limited to the tenant's entitlement under section 38(6)(b).

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on November 20, 2008 at which time the tenant paid a \$440.00 security deposit and that the tenant vacated the rental unit on or about November 15, 2011. The parties agreed that a condition inspection of the unit was conducted on November 15 at which time the tenant provided his forwarding address in writing and that the tenant returned the keys to the rental unit on that day. The tenant acknowledged that he agreed that the landlord was entitled to retain \$40.00 of the deposit.

The landlord claimed that he mailed the security deposit to the tenant on December 6. When asked why he did not mail it within 15 days of the date he received the forwarding address and completed the condition inspection report, the landlord replied that the tenant had promised to return to install a smoke detector and took the position that the tenancy did not end until the tenant returned to the unit on November 21.

The tenant testified that he did not receive the security deposit until February. The landlord testified that he reissued the security deposit when he learned that the tenant had not received the cheque sent in December.

Analysis

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 forwarding address is received in writing. I find that the tenancy ended on November 15 when the tenant surrendered possession of the unit and the parties completed a condition inspection report. Although the landlord speculated that the tenant may have retained keys to the unit, I find it unlikely that the landlord would have completed a condition inspection report and noted on the report that the tenancy ended on that day if he believed that the tenant had some possessory right after November 15. I find that the installation of the smoke detector did not operate to extend the tenancy.

I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of November 15, which was the day they received the tenant's forwarding address and the last day of the tenancy, and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit. As the tenant has already received the base amount of the deposit less the \$40.00 he agreed the landlord could retain, I award the tenant \$400.00. I award the tenant a further \$50.00 which represents the filing fee paid to bring this application for a total award of \$450.00.

Conclusion

The tenant is granted a monetary order under section 67 for \$450.00. This order may be filed in the Small Claims Division of the Provincial 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: May 02, 2012

Residential Tenancy Branch