



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent. The landlord also had a witness in attendance but no testimony was heard from the witness.

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 landlord provided a copy of a tenancy agreement signed by the parties on August 27, 2010 for a year fixed term tenancy that began on September 1, 2010 and converted to a month to month tenancy on September 1, 2011 for a monthly rent, at the end of the tenancy, of \$1,074.00 due on the 1st of each month with a security deposit of \$525.00.

Both parties provided a copy of the move out Condition Inspection Report that confirmed the tenant had agreed to the landlord retaining \$50.00 from the security deposit and provided the tenant's forwarding address. The Report was dated March 31, 2012.

The landlord submits that due to a keying error the tenants forwarding address was incorrectly entered into their accounts and the security deposit was sent via Canada Post to the incorrect address on April 9, 2012; that upon return of the mail from Canada Post on April 24, 2012 the landlord found the error and sent the deposit to the correct address on the same date and included a copy of the returned envelope.

The tenant submits that he questions as to why the landlord would phone him on the day that he served the landlord his Application for Dispute Resolution telling him about the clerical error and feels it is because they had failed to fulfill their obligations under the *Act*. The tenant acknowledged he received the security deposit some time after April 25, 2012, likely on May 1, 2012 in the amount of \$483.00.

The parties both indicated that there were no issues during the tenancy. While the landlord's agent indicated that she had no knowledge of the tenant's thoughts at the end of the tenancy because the tenant had originally tried to end the tenancy a month earlier but had given a "short" notice and the landlord had advised him he would be responsible for rent for the following month, which resulted in the tenant re-submitting a notice to end the tenancy on March 31, 2012.

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.

However, based on the testimony provided by both parties, I find there was a good relationship between the parties; that the landlord has provided some documentary evidence to establish there had been a clerical error and that as a result of that error the landlord was not able to comply with Section 38(1) but corrected the error within a reasonable time.

As a result, I find, in this instance there were exceptional circumstances that caused the landlord to fail to meet their obligations under Section 38(1) and that the landlord took reasonable steps to correct this breach as soon as they were aware of it.

Further, Section 7 of the *Act* requires a party who is claiming compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

While I accept there is no requirement under the *Act* for the tenant to call the landlord to remind them they have not complied with the *Act*, I accept that the landlord would have been made aware of the clerical error much sooner and been able to correct in an even

more timely manner had the tenant called the landlord in an attempt to mitigate any loss he had suffered as a result of not receiving the security deposit.

Conclusion

For the reason's noted above, I dismiss the tenant's Application in its entirety.

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: June 20, 2012.

Residential Tenancy Branch