



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of his security deposit and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and the Landlord acknowledged receipt of the hearing documents and evidence submitted by the Tenant. Each party gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order?

Background and Evidence

The parties agreed they entered into a written month to month tenancy agreement that began on November 1, 2009. Rent was payable on the first of each month in the amount of \$800.00 and on October 25, 2009 the Tenant paid \$450.00 which was comprised of \$400.00 security deposit and \$50.00 key deposit for two keys. The tenancy ended in November 2011 at which time the Tenant returned both keys. A condition inspection report form was completed at the onset of the tenancy however no form was completed at move out. The Tenant provided his forwarding address to the Landlord on December 2, 2011 when they completed the walk through and returned the keys.

The Landlord confirmed he has not returned the Tenant's deposit, that he does not have an Order allowing him to retain the deposit, he does not have the Tenant's written permission to retain the deposit, and he has not made application to keep the deposit. He stated he contacted the Tenant after receiving the application for dispute resolution and alleged he has issued a payment to the Tenant on March 3, 2012 however it was never cashed. The Landlord confirmed he did not submit evidence to support this.

The Tenant stated he did not receive anything from the Landlord and his address has not changed since he moved out.

Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The Landlord has admitted that he did not apply for dispute resolution to keep the security deposit, he does not have an Order allowing him to keep the deposit, and he does not have the Tenant's written consent to retain the security deposit.

The evidence supports the tenancy ended November 30, 2011 and the Tenant provided the Landlord with his forwarding address on December 2, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit and key deposit in full or file for dispute resolution no later than December 17, 2011. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find that the Tenant has succeeded in proving the test for damage or loss and I approve his claim for the return of double his security deposit of \$800.00 (2 x \$400.00), plus interest of \$0.00, plus the key deposit of \$50.00 for a total amount of **\$850.00**.

I find that the Tenant has succeeded with his application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been granted a Monetary Order in the amount of **\$900.00** (\$850.00 + \$50.00). This Order is legally binding and must be served upon the Landlord.

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 18, 2012.

Residential Tenancy Branch