



Dispute Resolution Services

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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 double 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 gave affirmed testimony. The Landlord confirmed receipt of the hearing documents which were sent to her via e-mail. I acknowledged that the documents were not served to her in accordance with the Act and asked if she wished to proceed with this matter today. The Landlord confirmed that she was prepared to proceed today as she wished to have this matter resolved as soon as possible.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

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 fixed term tenancy that began on August 1, 2011 and was set to end on July 31, 2012. Rent was payable on the first of each month in the amount of \$1,750.00 and on July 8, 2011 the Tenant paid \$875.00 as the security deposit. Both parties attended the move in condition inspection and signed the report on July 29, 2012 and the move out inspection on April 30, 2012. The Tenant signed the move out inspection report indicating that he did not agree with the report and noted that the Landlord would provide him with the hydro bills. The Tenant provided

his forwarding address to the Landlord on April 30, 2012 during the move out inspection.

The Tenant submitted that he agreed to pay for the hydro bills which is why he was only claiming 2 x \$700.00 when he had paid \$875.00 as the deposit. He knows now that the hydro bills amount to approximately \$206.00.

The Landlord confirmed that the Tenant agreed to pay for the hydro bills which were provided in her evidence for a total cost of \$209.93. She also confirmed that she provided the Tenant with a copy of the move out inspection report and that he did not agree to pay for cleaning or damages to the unit. The Landlord acknowledged that she did not make an application for dispute resolution to retain the security deposit and she has not returned any portion of the deposit to the Tenant.

Analysis

When a party makes application for dispute resolution to seek monetary compensation, the burden to prove their claim lies with the applicant.

The evidence supports that the tenancy ended April 30, 2012 and the Tenant provided the Landlord with his forwarding address on April 30, 2012, during the move out inspection. Both parties agreed that the Landlord was to retain the money for the hydro bill which left a security deposit of **\$665.07** (\$875.00 - \$209.93) to be disbursed in accordance with the Act.

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 or file for dispute resolution no later than May 15, 2012. 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 foregoing, I find that the Tenant has met the burden of proof and I award him double the security deposit (2 x \$665.07) plus interest of \$0.00 for at total amount of **\$1,330.14**.

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

Conclusion

The Tenant has been issued a Monetary Order in the amount of **\$1,380.14** (\$1,330.14 + \$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: August 07, 2012.

Residential Tenancy Branch