



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 by the tenant for a monetary order for the return of double the security deposit and the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant has named two persons as landlords - KS and RM. Both were served by registered mail. The tenant filed tracking slips as proof of service. RM attended the hearing. KS did not attend.

Issues to be Decided

Is the tenant entitled to the return of double the security deposit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on August 08, 2011 and ended on September 08, 2011. Prior to moving in the tenant paid a security deposit of \$350.00. The tenant filed copies of receipts as proof of payment. There was no written tenancy agreement. The tenant stated that when he asked for a written contract, KS told him that the receipts would suffice as one.

RM testified that he is the owner of the unit and had not rented to this tenant. He stated that he had never met the tenant and also did not know who KS was. He stated that he had a long term tenant renting the unit. The landlord filed copies of rental agreements he had entered into with a person named GS. The landlord also testified that he didn't meet GS often but received his rent mostly by direct deposit into his bank account and on occasion he stopped by at the rental unit and received his rent in cash from GS. The landlord also testified that he did not know who occupied the rental unit.

The tenant stated that KS informed him that he was the agent of the owner who he referred to as "Ricky". KS advertised the unit on line. The tenant met KS in response to the advertisement and visited the unit. He stated that the unit was a two bedroom apartment and the rooms were rented out individually mostly to foreign exchange students. He moved into one of the rooms and paid \$350.00 as a security deposit and \$700.00 for rent to KS.

The tenant filed email correspondence between himself and KS. The tenant decided to move out and started looking for a replacement tenant for his room. He corresponded with KS who advised him that "Ricky" would need to approve the new tenant. The tenant stated that the owner RM also used the name "Ricky" and he confirmed this by calling RM's home and asking for Ricky. RM stated that he had no idea who Ricky was.

The tenant filed copies of two letters written on September 19 to KS and RM giving them his forwarding address and requesting the return of his security deposit. The tenant also filed proof of having sent these letters by registered mail.

The tenant also contacted KS several times – on line, but he was unsuccessful in getting his security deposit returned to him.

Analysis

Based on the evidence in front of me and on the verbal testimony of both parties I find that RM is the owner of the unit and that the tenant did rent this unit for one month. I further find that the tenant paid \$350.00 as a security deposit to KS and provided his forwarding address to both the owner RM and his agent KS on September 19, 2012.

Even though the owner RM claims he has no knowledge of who the tenant, Ricky or KS are, based on the verbal testimony and the documentary evidence, I prefer the testimony of the tenant. I find that on a balance of probabilities, it is more likely than not that the owner is aware of the fact that the rooms of the rental unit are rented to students and since he testified that he receives rental income from this unit, it is his responsibility to be aware of who is occupying the unit. It is also his responsibility to manage the unit or have an agent do so on his behalf.

I accept that the tenant's testimony that the rooms were rented out individually as this is confirmed in the email correspondence between KS and the tenant. Accordingly, I do not accept the testimony of the landlord that he has a long term tenant renting the unit.

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.

Based on the sworn testimony of both parties, I find that the landlord was notified of the tenant's forwarding address on September 19, 2011. I further find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address.

Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit. The landlord currently holds a security deposit of \$350.00 and is obligated under section 38 to return double this amount along with the accrued interest of \$0.00. Since the tenant has proven his case, he is also entitled to the recovery of the filing fee of \$50.00.

Conclusion

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$750.00**, which represents double the base security deposit plus the filing fee.

This order may be filed in the Small Claims 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: August 02, 2012.

Residential Tenancy Branch