



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 the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

Prior to the hearing, the landlord submitted a written request for an adjournment on the grounds the tenants had not agreed to who was responsible for damage; that he is intending to submit his own Application for Dispute Resolution claiming against the tenant for several breaches of contract and of the *Residential Tenancy Act (Act)* but this cannot be completed because one of the tenants is still doing some repairs.

This hearing is being conducting solely on the tenant's Application seeking to ensure whether or not the landlord has complied with the requirements under Section 38 for the return of his security deposit and is not related to any claims by the landlord of damage to the unit for which the tenant may be responsible.

In addition, the landlord has been at liberty to file his own Application seeking to claim damage since the end of the tenancy and for up to 2 years from the end of the tenancy, in accordance with the *Act*. Proceeding with this hearing has no impact on these rights conferred to the landlord under the *Act* in seeking compensation for any damages or losses he may have suffered.

In addition, the landlord confirmed that this tenant moved in to the rental unit after an existing tenancy had begun 3 years ago but that the tenant paid a new security deposit when he moved into the unit and pays rent directly to the landlord. As such, I find this tenancy was a separate tenancy than that of the original tenant.

For these reasons I dismissed the landlord's request for adjournment. The hearing proceeded.

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 parties agree the tenant moved into the rental unit on September 1, 2011 for a month to month tenancy with rent, at the end of the tenancy, of \$610.00 due on the 1st of each month with a security deposit of \$312.00 paid. The landlord could not confirm when he received this amount.

The parties also agreed the tenancy ended by August 31, 2012. The tenant testified that he served the landlord with his forwarding address in writing on September 21, 2012 by delivering it to the landlord's address. The landlord testified that he could not remember specifically what date it was received but that time period sounded correct.

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.

As the landlord cannot specifically recall the date he received the tenant's forwarding address and since the tenant testified he delivered the address on September 21, 2012 I deem the landlord received the forwarding address 3 days later on September 24, 2012, pursuant to Section 90 of the *Act*.

As such, I find the landlord had until September 8, 2012 to either return the deposit in full to the tenant or file an Application for Dispute Resolution seeking to claim against the deposit. As the landlord failed to do so, I find the landlord failed to comply with Section 38(1) and the tenant is entitled to double the amount of the security deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$674.00** comprised of \$624.00 double the security deposit and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: January 07, 2013.

