



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This was a hearing with respect to the tenant's application by the tenant for a monetary order. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlord did not attend, although served with the application and Notice of Hearing.

In his initial form of application the tenant named both a personal and corporate landlord. The two names were not separated, but were placed in the first and last name fields in the online application form. The application was then corrected to remove the corporate party. By letter dated January 10, 2013 the party named as the respondent landlord acknowledged that he received the application and Notice of Hearing. He said that the landlord should be the corporation originally named by the tenant. He then named a person who, he said had been appointed to represent the landlord at the hearing and he attached 23 pages of documents in response to the tenant's claim.

The *Residential Tenancy Act* defines "landlord" as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

I find that the definition of Landlord is broad enough to encompass the individual party named in this proceeding, but I consider that the letter submitted by the corporate landlord may be construed as consent to add it as a party to this proceeding, which I have done.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the balance of his security deposit in the amount of \$193.86 as claimed?

Background and Evidence

The tenancy began in 2010 for a fixed term. The tenancy was renewed for a second term commencing on October 1, 2011. The monthly rent was \$1,250.00. Additional parking fees brought the total monthly payment to \$1,395.00. The tenant paid a \$625.00 security deposit and a \$625.00 pet deposit at the beginning of the tenancy. The tenancy was for a fixed term ending September 30, 2012 and the agreement provided that the tenant must vacate the rental unit at the end of the term.

The tenant testified that at the beginning of the second term of the tenancy, In addition to the tenancy agreement, the tenant signed an application for water services dated September 29, 2011 that was for the supply of water effective October 1, 2011.

The tenant testified that E.S. Corp., the water supply company billed him for the supply of water in the amount of \$193.86. He said that the charge was for the supply of water for a period before the effective date of his agreement to pay E.C. Corp., which commenced October 1, 2011. He testified that E.S. Corp. carried forward that amount and included it on each bill it rendered to him until the end of his tenancy on September 30, 2012.

The tenant testified that he never authorized the landlord to deduct the said sum from his security and pet deposits, but the landlord did so without his permission and returned his deposit amounts, less the sum of \$193.86. The tenant has requested the return of the withheld sum plus his filing fee for his application. He specifically refused any doubling of his deposit, but simply wants the withheld amount returned to him.

Analysis and Conclusion

The tenant did not provide copies of invoices from E.S. Corp. to confirm his testimony that the charged sum of \$193.86 pre-dated his agreement to pay E.S. Corp. for water services effective October 1, 2011, but for the purposes of this application, I need not determine that question because section 38 of the *Residential Tenancy Act* makes it clear that a landlord may not withhold or make deductions from a tenant's security deposit at the end of a tenancy unless the tenant has consented in writing. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenant did not consent to the deduction and the landlord did not apply for dispute resolution to claim payment of the amount in dispute. I therefore find that the tenant is entitled to a monetary award in the amount claimed. He is entitled to recover the \$50.00 filing fee for this application for a total award of \$243.86 and I grant the tenant an order under section 67 in the said amount. This order may be registered 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: February 22, 2013

Residential Tenancy Branch

