



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNR, MNSD, FF

Introduction

This was a new hearing of the applications by the tenant and the landlord that were first heard on November 29, 2012. The tenant's application for review of the original decision was granted by review decision dated December 21, 2012. The original decision and order was suspended and a new one was ordered. The tenant provided proof that he served the landlord with notice of the new hearing by registered mail sent on January 4, 2013. Records from Canada Post showed that the landlord received the Notice of Hearing and signed for it on January 8, 2013, but he did not attend the review hearing which was conducted by conference call.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the tenant entitled to a monetary award for rent paid and return of the security deposit including double the amount?

Background and Evidence

The tenancy began on May 15, 2009 for a fixed term ending May 15, 2010 for a one year term and thereafter month to month. Monthly rent was \$1,350.00 payable on the 15th of each month. The tenant paid a \$700.00 security deposit on April 25, 2010.

On May 30, 2012 the tenant gave the landlord a written Notice dated May 29th advising that the tenant and his wife would move out on July 14, 2012. The Notice included the tenant's forwarding address. The tenant moved out on July 14th. On September 13, 2012 the Landlord cashed his rent cheque for \$1,350.00 for rent from July 15, to August 15. In the previous hearing and in his written submissions the landlord alleged that the tenant did not provide written notice or a forwarding address. The landlord also alleged that the tenant caused damage to the rental unit. The tenant testified that the landlord re-rented to a new tenant who moved in a week after he moved out. The concierge told

him about her tenancy and police involvement. She trashed the place and some of the landlord's pictures relate to her occupancy not his. The tenant said that the landlord's invoices for repairs were concoctions and did not relate to any damage that he caused.

Analysis and conclusion

I find that there is no merit to the landlord's claim for damages and unpaid rent. I find that the tenant did give the landlord written notice ending the tenancy along with his forwarding address in writing on May 30, 2012. I therefore order that the original decision and order dated November 29, 2012 are hereby set aside. The landlord's application for dispute resolution is dismissed without leave to reapply.

The tenant gave proper notice to the landlord on May 30, 2012 and I find that the tenant is entitled to the return of July rent in the amount of \$1,350.00 because the landlord improperly cashed the tenant's cheque in September instead of returning it.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. 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.

I am satisfied that the tenant provided the landlord with his forwarding address in writing on May 30, 2012. The tenant moved out on July 14, 2012 and the landlord did not apply to claim the deposit until September 25, 2012, long after the expiry of the 15 day period. I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award him the sum of \$1,400.00. The total award to the tenant is the sum of \$2,750.00. The tenant is entitled to recover the \$50.00 filing fee for his application for a total award of \$2,800.00 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 19, 2013

Residential Tenancy Branch

