



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes MNSD, FF

Introduction

The original decision in this proceeding was made on April 9, 2013 after a conference call hearing was conducted to hear the tenant's application for a monetary order in the amount of double her security deposit. The original decision awarded the tenant a monetary order in the amount of \$725.00, being double the amount of the tenant's \$337.50 security deposit plus the \$50.00 filing fee for her application. The landlord did not attend the original hearing held on April 9, 2013. He applied for a review of the original decision and order on the grounds that he was unable to attend the original hearing by reason of circumstances that could not be anticipated and were beyond his control and on the ground that the decision was obtained by fraud. By decision dated May 1, 2013 the landlord's review application was granted; the original decision and order were suspended pending the outcome of the review and it was ordered that the review proceed by holding a new hearing to be conducted by conference call. I was appointed to conduct the new hearing by conference call.

The landlord called in at the appointed time, but the tenant did not call in and did not participate although she was personally served with the Notice of a Dispute Resolution Hearing and although she submitted her own documentary evidence after she was served with notice of the hearing. The hearing commenced at 10:30 A.M. and continued until 10:45 A.M. The tenant did not call in to participate in the hearing during that period.

Issue(s) to be Decided

Is the tenant entitled to payment of her security deposit, including double the amount?
Should the original decision and order pronounced on April 9, 2013 be confirmed, varied or set aside?

Background and Evidence

The tenant paid a security deposit of \$337.50 when the tenancy began in September, 2011. The tenant provided the landlord with her forwarding address before the tenancy ended on December 31, 2012.

The landlord testified that he mailed a cheque in the amount of \$337.50 to the tenant on January 15, 2013. The tenant's documentary evidence revealed that the envelope was date stamped by the post office on January 16, 2013, which is consistent with the landlord's testimony that he mailed it on January 15, 2013, within 15 days after the date that the tenancy ended. It was also on January 15, 2013 that tenant filed her application to claim double the security deposit. The tenant's application was filed prematurely because the 15 day period for the return of her deposit had not expired when she filed her application.

The landlord submitted documentary evidence that showed the tenant cashed the cheque in the amount of \$337.50 sent by the landlord. The funds were withdrawn from his bank account on February 4, 2013.

In the April 9, 2013 decision the arbitrator reported that the tenant testified as follows:

The tenant testified that she provided the landlord with a notice to end tenancy along with her forwarding address in writing, on November 14, 2012. The tenant filed a copy of the letter. After the tenancy ended on December 31, 2012, the tenant contacted the landlord by text message requesting the return of the security deposit. The landlord informed her that he would not return it because she owed the City for a utility bill.

The tenant stated that she paid the utility bill directly to the City and then contacted the landlord for her security deposit. The landlord did not return the security deposit.

Based on the findings in the decision under review the tenant did not disclose to the original arbitrator that she received and negotiated the landlord's cheque in the amount of \$337.50. Had the tenant disclosed that fact the arbitrator would not have awarded her the sum of \$725.00.

Analysis

Based on the landlord's uncontradicted testimony at the hearing before me, I find that he returned the full amount of the tenant's security deposit within 15 days after the date that the tenancy ended. I therefore find that the tenant is not entitled to a monetary award in any amount and that her application should be dismissed without leave to reapply.

Conclusion

I order that the original decision and order dated April 9, 2013 be, and is hereby set aside. The monetary order dated April 9, 2013 in the amount of \$725.00 is void and of no effect. The tenant's application for dispute resolution is dismissed without leave to reapply.

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: May 29, 2013

Residential Tenancy Branch

