



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an application by the tenant for double recovery of the security deposit and further monetary compensation.

The the hearing first convened by teleconference on April 30, 2013. On that date, the tenant and the landlord called in to the teleconference hearing, and the landlord requested an adjournment on the basis that he had been in hospital and required further time to submit evidence in response to the tenant's claim. I granted the adjournment, and both parties were sent notices of the reconvene time and date.

The hearing was reconvened by teleconference on May 30, 2013. The tenant participated in the teleconference hearing but the landlord did not. The landlord did not submit any documentary evidence prior to the reconvened hearing. I proceeded to hear the tenant's claim in the absence of the landlord.

Issue(s) to be Decided

Is the tenant entitled to double recovery of the security deposit?

Is the tenant entitled to further monetary compensation as claimed?

Background and Evidence

The tenancy began on June 15, 2012. At the outset of the tenancy, the tenant paid a security deposit of \$350. The tenant stated that in November 2012 the landlord served the tenant a notice to end tenancy for unpaid rent. On November 11 or 12, 2012, the tenant was away from the rental unit and her boyfriend went to the unit to pick up some of the tenant's possessions. When he arrived, there was a note on the door indicating that if the tenant entered the unit, the landlord would call the police. The tenant

attempted to contact the landlord numerous times to retrieve her belongings, but the landlord did not respond.

In January 2013 the Ministry mistakenly sent January's rent to the landlord, and the landlord cashed the cheque of \$700.

On February 5, 2013 the tenant applied for monetary compensation and recovery of her security deposit. The tenant's forwarding address was provided in the tenant's application. The landlord did not return the security deposit, the rent for January 2013 or any of the tenant's possessions, or apply for dispute resolution to keep any of these amounts. Neither did the landlord provide an inventory list of the tenant's possessions that he was storing for her.

The tenant stated that she was unable to provide photographs or receipts for her possessions, as the photographs and receipts were with her belongings. However, the tenant provided estimates of the value of her missing possessions, as best she could recall. The items included household furniture, bedding, clothing, toiletries, kitchenware, professional hair clippers, steel-toe boots and a Shaw cable box. The tenant's total claim for her possessions was \$4157; she also claimed \$700 for repayment of January 2013 rent and \$700 for double recovery of her security deposit.

Analysis

Security Deposit

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenancy ended in November 2012, and the tenant provided her forwarding address in writing in her application, served on the landlord in February 2013. The landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing. I therefore find that the tenant is entitled to double recovery of her security deposit, in the amount of \$700.

Remaining Claim

I accept the tenant's evidence that the landlord cashed the \$700 cheque that the Ministry mistakenly sent him for January 2013 rent, when the tenancy clearly ended in November 2012. This was a fraudulent act by the landlord, and I order him to repay that amount to the tenant.

I found that the tenant's estimates for her possessions were very reasonable, and in the absence of evidence to the contrary I find that the landlord withheld those items without the tenant's consent. I therefore grant the tenant's claim for her possessions in its entirety.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$5557. 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: June 3, 2013

Residential Tenancy Branch

