



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for the return of the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony. The tenant and landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to recover double the security deposit?

Background and Evidence

The parties agree that this fixed term tenancy started on February 15, 2012 and reverted to a month to month tenancy for the last month of the tenancy. Rent for this unit was \$950.00 per month due on the first day of each month in advance. The tenant paid a security deposit initially of \$500.00 on January 30, 2012; however \$50.00 of this was used against the first utility bill when the parties realized that the tenants had overpaid the security deposit.

The tenant testifies that they attended the move in and move out inspection with the landlord. The move out inspection was conducted on March 28, 2013 and the tenant testifies that she gave the landlord a forwarding address in writing at the end of the inspection. The tenant testifies that she received a cheque from the landlord for the security deposit for \$500.00. This cheque was dated March 29, 2013 and the tenant testifies it was received on April 09, 2013. The tenant testifies that on April 10 the tenant deposited the cheque however on April 25, 2013 the tenant received notification from the bank that the cheque had not cleared due to insufficient funds (NSF).

The tenant testifies that as the time for the landlord had passed to return the security deposit the tenant filed an application to recover double the security deposit. The tenant testifies that she informed the landlord by e-mail on April 25, 2013 that the cheque issued was NSF. The tenant testifies that she has not received any further cheques from the landlord. The tenant seeks to recover double the actual security deposit of \$450.00 and seeks a Monetary Order for \$900.00. The tenant also seeks to recover the \$50.00 filing fee.

The landlord testifies that as the tenant was leaving the condition inspection the landlord asked the tenant for a forwarding address. The landlord testifies that the tenant wrote her forwarding address on a piece of paper but did not sign it or put her name on it. The landlord argues that therefore this is not a document that can be relied on.

The landlord agrees that the first rent cheque was not honoured at the bank and submits that the landlord wrote this cheque from the wrong bank account. The landlord testifies that another cheque was sent to the tenant on April 29, 2013. The landlord agrees that this second cheque has not been cashed.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the

tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the tenant did provide a forwarding address in writing to the landlord, as requested by the landlord, and in accordance with s. 38(1)(b) of the *Act* on March 28, 2013. I further find the tenancy ended on March 31, 2013. As a result, the landlord had until April 15 to return the tenants security deposit or file an application to keep it. I find the landlord did not return the security deposit within the 15 days as the cheque sent to the tenant, to the address provided by the tenant, was not honored due to insufficient funds and the landlord has not filed an application to keep the security deposit.

When a landlord issues a cheque a landlord is responsible to ensure that the funds are available to honor that cheque. I do not hold with the landlords argument that because the tenant did not sign or include her name on the forwarding address that this document cannot be relied on. The landlord asked the tenant for the tenants forwarding address; the landlord received the tenants forwarding address in writing; and the landlord then proceeded to use this address to send the first cheque to the tenant. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$900.00** pursuant to section 38(6)(b) of the *Act*.

I further find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$950.00**. The order must be served on

the respondent and is enforceable through the Provincial Court 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: July 19, 2013

Residential Tenancy Branch

