



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

The rental unit is student housing provided by a private company, not an educational institution. The tenancy was a fixed term tenancy from September 1, 2012 to April 29, 2013. The rent for the entire term is calculated according to the number of days and is paid, in full, in advance. The tenant also paid a security deposit of \$250.00.

Although nothing was filed in evidence both parties acknowledged that a move-in and move-out inspections were conducted and condition inspection reports were completed on each occasion. The tenant provided his forwarding address in writing to the landlord on the move-out condition inspection report on April 29.

On or about May 13 the tenant received a form from the landlord setting out the damages claimed by the landlord.

On May 31 the landlord and the tenant's father had a conversation. The father stated that his son only acknowledged the loss of a key and was prepared to pay the \$25.00 replacement fee but he did not accept responsibility for any of the other damage claimed. The landlord agreed to accept the \$25.00 and subsequently sent the tenant a cheque in the amount of \$225.00. The letter accompanying the cheque said: "This represents final payment with regards to \$105A. . .".

After the cheque was received the tenant filed this application for dispute resolution.

The landlord's evidence is that they thought they had reached a final settlement with the tenant. The tenant's father said that the 15 day time limit had expired by the time they had the conversation.

Analysis

Section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue.

In this case the landlord did send the tenant an invoice detailing its' claim against the security deposit within the 15 day time limit but it did not make an application for dispute resolution as required by the Act. Accordingly, it is subject to the penalty imposed by section 38(6).

With respect to the landlord argument that the conversation on may 31 and the letter dated that date represented a compromise agreement that was to be in full and final satisfaction of all claims either party may have against the other, usually in these situations there is a separate settlement agreement, more specific working in the letter that accompanies the cheque, or at the very least, a notation on the cheque that it is "in full and final settlement". The documentation accompanying this payment is not specific enough for me to conclude that both parties intended that this payment would be a full and final settlement and that the tenant was relinquishing any claim he may have pursuant to section 38(6).

Accordingly, I find that the tenant has established a total monetary claim of \$300.00 comprised of the section 38(6) penalty in the amount of \$250.00 and the \$50.00 fee paid by the tenant for this application and I grant the tenant an order under section 67 in this amount.

Conclusion

A monetary order in favour of the tenant has been made. If necessary, 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: August 08, 2013

Residential Tenancy Branch

