



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD FF

Introduction

This hearing dealt with an application by the tenant for recovery of the security deposit and further monetary compensation. The tenant attended the teleconference hearing but the landlord did not.

The tenant submitted evidence to establish that the landlord was served with the application for dispute resolution and notice of hearing by registered mail sent on November 24, 2014. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the landlord was deemed served with notice of the hearing on November 29, 2014, and I proceeded with the hearing in the absence of the landlord.

Issue(s) to be Decided

Is the tenant entitled to recovery of the security deposit?

Is the tenant entitled to further monetary compensation as claimed?

Background and Evidence

The tenancy began in November 2011. At the outset of the tenancy, the tenant paid the landlord a security deposit of \$325. In a previous dispute resolution hearing, convened on May 15, 2014, the tenant informed the arbitrator that he was fully moved out of the rental unit by April 27 or 28, 2014. In that hearing the tenant also indicated that he had not given the landlord his forwarding address in writing. In the application before me, the tenant has provided evidence that he sent his forwarding address in writing to the landlord by registered mail sent on May 20, 2014 and received by the landlord on May 26, 2014. The tenant stated that the landlord has not returned the security deposit.

I have no evidence before me to indicate that the landlord applied for dispute resolution to keep the security deposit.

The tenant indicated that the remainder of his monetary claim, aside from recovery of his filing fee, is as follows:

- 1) \$968.50 for an amount the tenant claimed in a previous application

The tenant filed a monetary claim that was scheduled to be heard on October 30, 2014; however, neither the landlord nor the tenant attended the hearing, and the tenant's application was dismissed with leave to reapply.

I note that in his evidence submissions for this application the tenant requested that the files from two previous hearings, held on May 15, 2014 and October 30, 2014, be reopened or amended to this file. In the file before me there is also a note dated November 20, 2014, requesting that the tenant amend his application to include the rental unit address and informing the tenant that the RTB is not able to reopen files or transfer evidence from another file. The tenant filed his amended application on November 21, 2014 but did not submit any further evidence to support his previous claim for \$968.50.

- 2) \$162.50 for gross negligence and \$58.50 for interest

The tenant stated that the landlord has been obviously evasive despite many opportunities to pay the tenant restitution. As a result of the dispute resolution hearing on May 15, 2014, the tenant was granted a monetary order of \$5,296.41. The tenant served the landlord with the monetary order and then registered it in Small Claims Court; however, the landlord did not attend the payment hearing and a warrant was issued for her arrest.

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 amount of the security deposit.

In this case, the tenancy ended on April 27 or 28, 2014, and the landlord received the tenant's forwarding address in writing on May 26, 2014. 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 has established a claim for double recovery of the security deposit, in the amount of \$650.

Remainder of Monetary Claim

The tenant did not provide sufficient evidence to support the amount of \$968.50 that was claimed in a previous application. I therefore dismiss this portion of the tenant's claim.

The tenant is also not entitled to the compensation claimed for gross negligence or interest. The tenant is clearly frustrated that the landlord has been evading the Small Claims hearing and failing to return his security deposit. However, I have no authority under the Act to grant compensation claimed for incidents that have occurred after the end of the tenancy or which are related to a Small Claims matter or the dispute resolution process, aside from the filing fee. I further have no authority under the Act to grant interest on any amount aside from any applicable interest, as set out by regulation, on the security deposit. I therefore dismiss these portions of the tenant's application.

Filing Fee

As his application was partially successful, I find that the tenant is entitled to recover the \$50 filing fee for the cost of this application.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$700. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the tenant's application 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: February 2, 2015

Residential Tenancy Branch

