



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the recovery of strata fines, for the cost of cleaning the carpet and for the filing fee. The tenant applied for the return of double the security deposit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for the recovery of strata fines, for the cost of cleaning the carpet and for the filing fee? Is the tenant entitled to the return of double the security deposit and the filing fee?

Background and Evidence

The tenancy started on August 01, 2011 and ended on July 30, 2014. The monthly rent was \$1,325.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$650.00. The tenant agreed that the key deposit of \$100.00 was returned to him.

Both parties filed copies of the move in and move out inspection reports. The move out inspection was done in the presence of both parties and the tenant agreed to cover the cost of professionally cleaning the carpet. The landlord filed a copy of a receipt to support her claim for \$156.45 for cleaning the carpet.

The tenant provided a forwarding address on the day of the move out inspection. The address was written on the move out inspection report. The landlord stated that she sent the tenant a copy of the move out inspection to the forwarding address and it was returned by Canada post. The landlord filed the actual envelope that was returned and it was date stamped August 14, 2014 and was addressed to the tenant at his forwarding address as provided by him.

The tenant contacted the landlord to ask why he had not received his security deposit. The landlord stated that she asked the tenant to provide a forwarding address in writing and the tenant did not.

The tenant filed evidence to show that he had purchased a mail forwarding service from Canada Post which would re direct all his mail to the address that he had provided the landlord with, on the move out inspection report. The tenant's evidence also showed that this service would continue until December 2014.

The landlord filed copies of all the warning letters from the strata regarding the noise and other violations from the rental unit. These letters are all dated on various dates through the tenancy. The tenant denied having violated strata by-laws and stated that he disputed all the fines in writing to the strata council but did not hear back. The tenant did not file copies of his letters of dispute.

The landlord also filed letters from the strata council which were sent as a follow up to each warning. The letters stated that since the strata had not received a written response and/or a request for a hearing, a fine was levied against the owner of the rental unit.

Both parties agreed that they attended a meeting with a lawyer to discuss the fines. The parties both stated that the lawyer was hired by the other. Neither party paid the lawyer. The tenant stated that the lawyer wrote a letter to the strata council but did not have knowledge of the contents of the letter. He also stated that he had not seen the letter. The landlord testified that she did not know of any letter sent to the strata council by this lawyer.

The landlord has made a claim of \$2,900.00 for the fines and \$156.45 for the cost of cleaning the carpet. The tenant has made a claim for the return of double the security deposit. Both parties are also claiming the recovery of the filing fee.

Analysis

Landlord's application:

The landlord filed adequate evidence to support her claim for the recovery of the strata fines. The documents filed into evidence included warning letters from the strata, letters notifying the landlord that fines were imposed by the strata and a statement of accounts that indicate that the landlord paid \$2,900.00 towards fines. The warning letters and fines are for incidents and violations that occurred during the tenancy. Based on the evidence before me, I find that the landlord paid the fines for violations on the part of the tenant and therefore the tenant must reimburse the landlord \$2,900.00.

The tenant agreed to cover the cost of cleaning the carpet and therefore I award the landlord \$156.45. The landlord has proven her case and is entitled to the recovery of the filing fee.

Overall the landlord has established a claim of \$3,106.45.

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

In this case, the tenancy ended on July 30, 2014 and the tenant provided the landlord with his forwarding address on that date. On August 14, 2014 the landlord mailed the tenant a copy of the inspection report but did not include a cheque for the return of the security deposit. The landlord made this application to retain the security deposit on September 25, 2014, which is outside the legislated time frame of 15 days.

Based on the testimony of both parties, I find that the tenant did provide adequate evidence to support his testimony that the correct forwarding address was given to the landlord on July 30, 2014. The return of the landlord's envelope is more likely than not an error on the part of Canada Post. However the landlord testified that she had sent a copy of the move out inspection in the envelope that was returned.

Therefore I find that the landlord did not include a cheque for the return of the deposit and accordingly failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address. Therefore the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

The landlord currently holds \$650.00 for a security deposit. Accordingly, the landlord must return \$1,300.00 to the tenant. Since the tenant has proven his case he is also entitled to the recovery of the filing fee of \$50.00.

Overall the tenant has established a claim of \$1,350.00.

I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$1,756.45 which consists of the difference between the established entitlements of the landlord (\$3,106.45) and the tenant (\$1,300.00).

Accordingly, I grant the landlord an order under section 67 of the *Residential Tenancy Act*, for **\$1,756.45**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$1,756.45**.

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: April 02, 2015

Residential Tenancy Branch

