



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double his outstanding security deposit. The hearing was convened on August 17 and both parties participated in the conference call hearing. At the hearing, both parties indicated that they had crucial evidence which they had not provided to the other party. On that date, I issued an interim decision in which I ordered the parties to exchange evidence and if desired, submit a written response to the evidence received. After the hearing, the tenant submitted proof that he had sent his evidence to the landlord via registered mail. The landlord submitted a written statement advising that he did not have a condition inspection report on file for the tenant.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2013 at which time the tenant paid a \$462.50 security deposit and ended on October 31, 2014. They further agreed that the landlord returned to the tenant \$142.87 of the deposit.

The tenant claimed that the parties conducted an inspection of the unit on October 31 at which time he provided his forwarding address in writing. He claimed he did not receive a copy of the condition inspection report. The landlord claimed that the inspection was not performed until November 11 and acknowledged having received the tenant's forwarding address on the report. The landlord testified that his usual practice is to give tenants a copy of the condition inspection report, but he was uncertain as to whether he had done so on this occasion. Neither party provided a copy of the report.

The landlord claimed that he returned the reduced deposit on November 26, which by his calculations was the last day to mail the deposit after having received the forwarding address. The tenant provided a copy of an email exchange between the parties which contains an email dated November 27 in which the landlord told the tenant that he would place the deposit in the mail "today", which I take to mean November 27.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the deposit in full to the tenant or file an application for dispute resolution to make a claim against the deposit. Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security deposit.

I find that the tenant paid a \$462.50 security deposit and vacated the rental unit on October 31, 2014. Although the landlord claimed that the condition inspection was performed 11 days after the tenancy ended, he was unable to provide proof of this and was unable to provide a copy of the condition inspection report. I find that it would be highly unusual for an inspection to take place several weeks after the end of a tenancy and as the landlord provided no proof that this occurred, I find that the parties conducted the inspection on October 31 and that the tenant gave his forwarding address to the landlord in writing at that time. The landlord had until November 15 to either return the entire deposit to the tenant or file an application for dispute resolution to claim against it. I find that the landlord wrongfully withheld \$319.53 of the deposit and must return this amount to the tenant. I further find that the landlord failed to comply with section 38(1) and is now liable to pay the tenant double the security deposit. I therefore award the tenant \$782.03 which represents the \$319.53 which was wrongfully withheld and the penalty amount of \$462.50. As the tenant was successful in his claim, I find he should recover the filing fee paid to bring his application and I award him \$50.00 for a total award of \$832.03. I grant the tenant a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is ordered to pay \$832.03 to the tenant and the tenant is granted a monetary order for this sum.

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: September 30, 2015

Residential Tenancy Branch

