Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNIQUE TELECOMMUNICATIONS INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

The tenant applies to recover a $3700.00 security deposit.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other.

It was agreed that this tenancy involved a portion of a house. The tenancy started March 5, 2019 and ended April 30, 2019. The rent was $3700.00. It was agreed that the tenant paid a $3700.00 security deposit and that a forwarding address in writing was provided to the landlord May 4, 2019 by letter from the tenant.

It was admitted by the landlord that he had not repaid the deposit money nor had he made his own application to claim against any of the money.

In these circumstances the parties were informed of the effect of s. 38 of the *Residential Tenancy Act* (the "*Act*") and how, once a tenancy has ended and once the tenant has provided the landlord with a forwarding address in writing the landlord has fifteen days to either repay the deposit money to the tenant or make an application for dispute resolution to keep all or a portion of it. Section 38 provides that in the event a landlord neither repays the deposit money or applies to keep it with the fifteen day period, the landlord must account to the tenant for double the amount of the deposit.

This tenant had not claimed double the amount of the deposit in his application. The parties were referred to Residential Tenancy Policy Guideline 17, "Security Deposit and Set off [*sic*]" that indicates an arbitrator is required to award the doubling penalty even

where it has not been claimed, unless the tenant specifically declines it. The question was therefore put to Mr. M.F. for the tenant who chose not to refuse the doubling.

In these circumstances counsel for the landlord was offered the opportunity to present argument and evidence to exclude his client from the effect of s. 38 based on the agreed or admitted facts. The tenant did not give evidence. His counsel indicated that the landlord is not conversant with the English language nor with the *Act* and thought he could simply send in evidence under this, the tenant's application, to justify keeping the deposit money.

As stated at hearing the ignorance of the law is not a defence in this matter. The landlord has involved himself in the business of residential landlord and tenant matters in order to earn income and he is responsible to know the laws and rules. In order to obtain an award in his favour, he is required to make his own application. He is free to do so within the time limitations imposed on him by law but not having complies with s. 38, he must suffer the consequences.

In result the tenant is entitled to recovery the $3700.00 security deposit and to the doubling of that amount to $7400.00. I also award the tenant recovery of the $100.00 filing fee.

In result, the tenant will have a monetary order against the landlord in the amount of $7500.00.

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 06, 2019

Residential Tenancy Branch