



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 tenants for a double recovery of the security deposit. One of the two tenants and the owner of the rental unit participated in the teleconference hearing.

Preliminary Issue

The respondent, who is the owner of the unit, submitted that he ought not to have been named as the respondent in this application. As set out in the tenancy agreement, the tenants entered into the tenancy agreement with another party, TG, and paid the security deposit to her, in December 2008. TG was in fact a tenant of the owner, and had not told either the tenants or the owner that she was subletting. In March 2009, TG had disappeared and the owner discovered the tenants in the rental unit. The owner then told the tenants to start paying rent directly to him. The owner never received a security deposit from TG for her tenancy; nor did TG forward the tenants' security deposit to the owner.

The owner acknowledged that he was aware that the tenants had paid a security deposit to TG, and he told the tenants near the end of the tenancy that he would return their security deposit if they returned the unit to him in good condition. The tenants did not return the unit in a condition that was acceptable to the owner, so he did not return the deposit.

The tenant's response was that she and the male tenant had several discussions with the owner near the end of the tenancy, and the landlord intended to return their deposit. Then, the landlord told the tenants that he could not return their deposit until after he sold the unit.

I have determined that the owner assumed the tenancy in March 2009, and it was therefore the owner's responsibility to have the tenants' security deposit transferred to him when he took over as landlord of their tenancy. I find that the tenants properly named the owner as respondent in this application, and I allow the application. I hereafter refer to the owner as "the landlord."

Issue(s) to be Decided

Is the tenant entitled to double recovery of the security deposit?

Background and Evidence

The tenancy began on December 1, 2008. The tenants paid a security deposit of \$875 at the outset of the tenancy. The tenancy ended on January 31, 2011. The tenants provided the landlord with their written forwarding address on February 22, 2011. The landlord has not returned the security deposit or applied for dispute resolution.

Analysis

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 base amount of the security deposit.

In this case, the tenancy ended on January 31, 2011, and the tenants provided their forwarding address in writing on February 22, 2011. I further find that 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 find that the tenants have established a claim for the security deposit of \$875, accrued interest of \$1.11, and double the base amount of the security deposit in the amount of \$875, for a total of \$1751.11. The tenants are also entitled to recover the \$50 filing fee for this application.

Conclusion

I grant the tenants an order under section 67 for the balance due of \$1801.11. 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: July 21, 2011.

Residential Tenancy Branch