



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This conference call hearing was convened in response to the tenant's application for the return of the security deposit and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the month to month tenancy started on April 19th, 2010 and ended February 28th, 2011. The rent was \$1600.00 per month and the tenant paid a security deposit of \$800.00. Condition inspection reports were not completed at the start or the end of the tenancy.

The tenant testified that he handed the keys to the unit at the end of the tenancy on February 28th, 2011 in the presence of the landlord, and that at that time the landlord signed a note in which he stated that he would return the security deposit.

In his documentary evidence, the tenant provided a copy of the handwritten note in question; it was dated February 28th, 2011, and the landlord declared that the unit was in good condition and that he would return the tenant's security deposit of \$800.00 within 15 days. The tenant stated that he gave the landlord his forwarding address in writing on February 28th, 2011. In his documentary evidence, the tenant provided ten photographs of the unit to address concerns with water leaks and moisture problems.

The landlord testified that this walk-through occurred at 8:00PM, that it was dark and that he did not have an opportunity to do a thorough inspection. He since discovered that the tenant occupied the basement only, and that he had sub-let the upper level of the home without his knowledge or consent to other tenants that had parties and smoked marijuana. The landlord stated that he discovered several damages to the house and the yard when he inspected the property under daylight; in particular the main entrance door frame was damaged and needed replacing. The landlord stated that he only kept \$250.00 for that repair and returned the balance of the security deposit to the tenant. In his documentary evidence, the landlord provided photographic evidence of the damaged door frame. The landlord stated that he lost one month's rent because of the time it took to make all the necessary repairs throughout the unit before finding new tenants.

The tenant argued that he had no knowledge of the damage to the main entrance because he always used the back door. The tenant agreed that he received the balance of the security deposit of \$550.00 from the landlord.

Analysis

Section 38(1) of the *Residential Tenancy 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 landlord received the tenant's forwarding address in writing.

The landlord confirmed receipt of the tenant's forwarding address however he did not file for dispute resolution and therefore the tenant is entitled to the return of the balance of his security deposit.

Section 60(1) of the Act provides for the landlord to make his own application for dispute resolution over matters related to the tenancy within two years after the tenancy ends. The landlord can submit his evidence concerning damages at that time.

Conclusion

The tenant established a claim of \$250.00. Since he was successful, the tenant is entitled to recover the \$50.00 filing fee and pursuant to Section 67 of the Act, I grant the tenant a monetary order for the sum of \$300.00.

This Order may be registered 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 06, 2011.

Residential Tenancy Branch