



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to recover double the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. Neither party provided any documentary evidence for this hearing. The testimony of the parties has been considered in this decision.

Preliminary issues

At the outset of the hearing the landlord states that the tenant has named the landlord's law company as landlord. The landlord seeks to amend this to show the correct name for the landlord's company dealing with residential tenancies. The tenant did not raise any objections to the landlord's name being amended. The landlords name has been amended on the Monetary Order issued to the tenant.

Issue(s) to be Decided

Is the tenant entitled to recover double the security deposit?

Background and Evidence

The parties agree that this tenancy started on November 23, 2010 and ended on July 31, 2011. The parties also agreed that this was a fixed term tenancy for one year and the parties agreed that the landlord could end the tenancy early off he paid the tenant compensation of one month's rent for breaking the lease. Rent for this unit was \$1,350.00 a month and was due on the first of the month and the tenant paid a security deposit of \$675.00 on November 23, 2010. The parties agree that a move in and a move out condition inspection of the property was conducted at the start and end of the tenancy.

The tenant testifies that at the end of the tenancy the landlord filled in the condition inspection report and the tenant testifies that he gave the landlord his forwarding address in writing on this report on July 31, 2011. The tenant testifies that the landlord failed to send him a copy of this report and failed to send the tenant the security deposit within 15 days of the tenancy ending. The tenant testifies that as he was away on business he did e-mail the landlord and request his security deposit but he received no response. The tenant testifies that due to this the tenant seeks to recover double his security deposit to the sum of \$1,350.00.

The landlord testifies that he was not aware that he only had 15 days to return the security deposit or file a claim to keep it. The landlord testifies that he does not have the move out condition inspection report but he does remember doing the inspection with the tenant but for some reason no longer has a copy of the report. The landlord testifies that he thought the tenant had taken the form at that time. The landlord agrees he did not return the tenant's security deposit but states he could not do so without forwarding address. The landlord testifies that as the tenant had lost his keys to the rental unit that the tenant owed the landlord \$100.00 for new keys.

The tenant testifies that the landlord has neglected his responsibility to send the tenant a copy of the move out condition inspection report and if the landlord has lost this

inspection report that is the landlord's responsibility and not the fault of the tenant. The tenant does agree however that the landlord may deduct the sum of \$70.00 to cover the costs for new keys as the tenant does agree he did lose the key to the rental unit.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the testimony presented I find it is likely that the landlord did receive the tenants forwarding address in writing on July 31, 2011. As a result, the landlord had until August 15, 2011 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and has not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit pursuant to section 38(6)(b) of the *Act* less the amount of \$70.00 that the tenant agreed the landlord may deduct at the hearing.

The landlord argues that he did not have a copy of the inspection form. However I am of the opinion that if the landlord has lost this form then this is landlord's responsibility. The landlord also argues that the tenant has provided no documentary evidence to show that he did put his address on the move out condition inspection report. However if the landlord has failed to send the tenant a copy off the move out condition inspection report then the tenant would be unable to provide a copy of that report in evidence. As the landlord has breached section 36 (2)(c) off the *Residential Tenancy Act* which

states: having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations; Then I am inclined to find in favor of the tenants application as the tenant would be unable to provide documentary evidence due to the landlord's breach of this section of the *Act*.

Consequently, I uphold the tenant's application to recover double the security deposit to the sum of \$1,350.00 less the sum of \$70.00 the tenant agrees the landlord may deduct. I further find that the tenant has been successful with his application and the tenant is entitled to recover his filing fee of \$50.00.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,330.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: October 10, 2012.

Residential Tenancy Branch