

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double their security deposit. Both parties participated in the conference call hearing

Issue(s) to be Decided

Are the tenants entitled to the return of double their security deposit?

Background and Evidence

The undisputed facts before me are as follows. A \$350.00 security deposit was paid on May 23, 2007. The tenancy ended on November 17, 2008. On or about November 7 the tenants gave the landlord their forwarding address in writing.

The landlord presented evidence to show that the rental unit had been damaged and left in an unclean condition. The landlord argued that although he did not make a claim against the security deposit, his losses should be applied by way of set-off as against the tenants' claim.

Analysis

Section 38(1) of the 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 forwarding address is received in writing. I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit.

At the hearing I refused to hear or consider the landlord's evidence regarding the

damage to the rental unit as this is not a defense to the tenant's claim. I cannot apply a set-off when only one party has made a claim. The landlord is free to bring an application for a monetary order before this tribunal.

The landlord currently holds a security deposit of \$350.00 and is obligated under section 38 to return this amount together with the \$8.51 in interest which has accrued to the date of this judgment. The amount that is doubled is the base amount of the deposit.

Conclusion

I grant the tenants an order under section 67 for \$758.51, which sum includes the double security deposit, interest and the \$50.00 filing fee paid to bring this application. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 16, 2009.