

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for return of the amount of the security deposit. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

The applicant participated in today's hearing, but the landlord did not. The tenant provided a registered mail tracking number and confirmation that the landlord's address received the Notice of Hearing package on March 31, 2009. Despite having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in today's conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed facts before me, under solemn affirmation by the tenant, are as follows.

The tenancy began on June 15, 2008 and ended on February 28, 2009. The landlord collected a security deposit of \$1095 at the outset of the tenancy. Prior and subsequent to the end of the tenancy neither party requested or participated in a move in or move out inspection of the rental unit. The tenant testified that the parties never entered into a formal tenancy agreement at the outset of the tenancy or when the tenant requested same six months after the start of the tenancy.

On March 03, 2009, the landlord was sent an e-mail by the tenant notifying the landlord of his forwarding address and request for the return of the security deposit. The tenant testified and provided evidence in support that e-mail communication with the landlord

has been the primary form of communication between the parties since the outset of the tenancy. However, the tenant has not had any communication from the landlord since the March 03, 2009 e-mail was sent. The landlord has not confirmed by any means receiving the e-mail. The tenant repeatedly attempted to establish e-mail communication with the landlord, before determining to apply for dispute resolution.

The tenant testified that the Notice of Hearing package sent by registered mail was inclusive of all documents including the tenant's application for dispute resolution, with all particulars of the tenant's claim respecting the security deposit as well as the tenant's current address.

Analysis

Section 38(1) of the Act provides as follows:

- 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
 - 38(1)(a) the date the tenancy ends, and
 - 38(1)(b) the date the landlord receives the tenant's forwarding address in writing,
 the landlord must do one of the following:
 - 38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the landlord was in receipt of the tenant's forwarding address in writing by the *deemed served* date of April 03, 2009.

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

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of **\$1095** and was obligated under section 38 to return this amount together with the **\$9.29** in interest which had accrued to April 03, 2009. The amount which is doubled is the \$1095 base amount of the deposit before interest.

Conclusion

I find that the tenant has established a claim for **\$2199.29**. The tenant is also entitled to recovery of the **\$50** filing fee. I grant the tenant an order under section 67 for the sum of **\$2249.29**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 28, 2009.