

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain a Monetary Order for the return of her security deposit and to recover the cost of the filing fee from the landlord.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via courier, which the landlord signed receipt of on March 24, 2009 at 11:10 a.m.

The tenant appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

The landlord did not appear despite being served with notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Has the tenant proven that the landlord has failed to return her security deposit in accordance with Section the *Act*, entitling the tenant to a Monetary Order for double the security deposit in Accordance with Section 38 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on March 1, 2008 and ended February 28, 2009. Rent was payable on the first of each month in the amount of \$950.00 per month and the tenant paid a security deposit of \$450.00 on March 1, 2008.

The tenant testified that she attended a move-out inspection on Saturday February 28, 2009 at approximately 2:30 p.m. and that she wrote her forwarding address on the move-out inspection report on February 28, 2009.

The tenant stated that the landlord photocopied the move-out inspection report immediately after the inspection, and that the landlord wrote on the tenant's photocopy, "full security deposit returned \$450.00". The tenant stated that she questioned the landlord why she was writing this on the move-out inspection when she hadn't been given the security deposit back and that the landlord told the tenant that this is how the landlord advises the head office to issue the refund cheque to the tenant.

The tenant testified that she called the landlord on several occasions between March 2, 2009 and March 20, 2009 and that the landlord never answered the phone so the tenant always left a message requesting the return of her security deposit with interest.

The tenant advised that the landlord finally called her on March 24, 2009 at approximately 11:25 a.m. and that this call happened about 15 minutes after the Notice of Dispute Resolution was served to the landlord. The tenant didn't answer the call so the landlord left a message. The tenant played the message at the Dispute Resolution Hearing and the message consisted of the landlord requesting the tenant to call her and advise her if the tenant had not received her damage deposit back. The tenant stated that she called the landlord back to the number the landlord called from, and it was the landlord's residence so the tenant said she spoke to the landlord during this call and informed the landlord that she was proceeding with Dispute Resolution because she has not received her damage deposit back.

The tenant submitted into evidence a copy of an envelope, post marked March 30, 2009, sent from the landlord to the tenant with a cheque in the amount of \$450.00 stating return of the damage deposit.

The tenant is claiming double her security deposit, interest, and the cost of the filing fee.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the tenant, bears the burden of proof and the evidence furnished by the Applicant tenant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In regards to the tenant's right to claim damages from the landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The tenant has provided evidence that she has complied with the *Act* and provided her forwarding address to the landlord on February 28, 2009, the last day of her tenancy. Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Based on the above, I find that the landlord did not return the tenant's security deposit until March 30, 2009, (30 days after the tenancy ended and the tenant provided her forwarding address) and the landlord has failed to comply with Section 38(1) of the *Act*, that the landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the amount of the security deposit.

I find that the tenant has succeeded in proving the test for damage or loss as listed above and approve her claim for the return of double the security deposit with interest, less the amount sent to the tenant on March 30, 2009 in cheque # 0578.

Recovery of the filing fee – As the tenant has been successful in her claim, I find that she is entitled to recover the cost of the filing fee from the landlord.

Monetary Order – I find that the tenant is entitled to a monetary claim:

Doubled Security Deposit 2 x \$450.00	\$900.00
Interest on Security Deposit of \$450.00 from March 1, 2008	5.64
Recover of the filing fee	<u>50.00</u>
Subtotal due to the Tenant	\$955.64
Less payment issued on Cheque # 0578	-450.00
TOTAL AMOUNT DUE TO THE TENANT	\$505.64

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for \$505.64. The order must be served on the respondent landlord 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: June 16, 2009.

Dispute Resolution Officer