

DECISION

Dispute Codes MNSD FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of his security deposit, to receive double the security deposit, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 19, 2009. Mail receipt numbers were provided in the Tenant's documentary evidence. The Landlord was deemed to be served the hearing documents on March 24, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order pursuant to Sections 38, 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on November 1, 2008 and ended on January 31, 2009. Rent was payable on the first of each month in the amount of \$750.00 and the Tenant paid a security deposit of \$375.00 on November 1, 2008.

The Tenant provided the Landlord with his forwarding address, in writing, on March 9, 2009 and has requested the return of his security deposit. The Tenant submitted

evidence that shows that the Landlord issued the Tenant a cheque in the amount of \$201.00 however this cheque was not honoured by the bank.

The Landlord testified that he did not complete a move-in inspection report and he did not complete a move-out inspection report but that the Tenant agreed to have the carpets professionally steam cleaned at the end of the Tenancy. The Landlord is requesting to deduct \$119.00 plus GST from the Tenant's security deposit as he had to rent a steam cleaner to clean the carpets before another Tenant could move in.

Analysis

The tenant has requested the return of his \$375.00 security deposit plus interest which was paid on November 1, 2008. Based on the testimony I find that the tenancy ended on January 31, 2009 and that the Tenant provided the Landlord with his forwarding address in writing on approximately March 9, 2009.

The evidence supports that the cheque issued by the Landlord on February 15, 2009, as partial refund of the Tenant's security deposit, was not honored by the bank. While the Landlord argued that he was required to rent a steam cleaner after the Tenant failed to steam clean the carpets at the end of the tenancy, the Landlord confirmed that he did not apply for dispute resolution to claim against the security deposit and that he has not applied for a monetary order against the tenant to recover his loss.

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 has failed to comply with Section 38(1) of the *Act* and that the Landlord is 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 and pet deposit and the landlord must pay the tenant double the amount of the security and pet deposit. I find that the Tenant has succeeded in proving the test for

damage or loss as listed above and approve his claim for the return of double the security deposit.

In regards to the Landlord's claims and evidence relating to the condition of the rental unit at the end of the tenancy, I am not able to neither hear nor consider the Landlord's claim during these proceedings as this hearing was convened solely to deal with the Tenant's application. That being said, I must point out that the Landlord is at liberty to make his claims, in a separate application and to resubmit his evidence, if the Landlord wants to pursue requesting a Monetary Order.

Recovery of the filing fee - The Tenant has been successful with his claim and I find that he is entitled to recover the cost of the filing fee from the Landlord for this application.

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

Double Security Deposit 2 x \$375.00	\$750.00
Interest on Security Deposit of \$375.00 from Nov 1, 2008	0.94
Recovery of the filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$800.94

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 \$800.94. 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 30, 2009.

Dispute Resolution Officer