

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain a Monetary Order for the return of her security and pet deposits.

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 April 17, 2009. Mail receipt numbers were provided in the tenant's verbal testimony. The landlord was deemed to be served the hearing documents on April 22, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

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 notice of the hearing in accordance with the *Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence is:

- Whether the tenant is entitled to a Monetary Order under section 67 of the *Act* for the return of her security deposit and pet deposit

Background and Evidence

The month to month tenancy began on September 1, 2007 and ended April 10, 2008. Rent was payable on the first of each month in the amount of \$650.00. The tenant paid \$325.00 in a security deposit and \$290.00 for a pet deposit on September 1, 2007.

The tenant testified that she had signed a tenancy agreement at the beginning of the tenancy but that she did not get a copy of the agreement. The tenant stated that the landlord stood in the doorway when she viewed the rental unit and asked her if she liked the unit and would take it, but that there was no formal move-in or move-out inspection reports completed.

The tenant stated that the tenancy ended on April 10, 2008 after she had given the landlord verbal notice. The tenant stated that she had told the landlord for about two months that she was moving.

The tenant's witness testified that he was the person who rented the above mentioned rental unit shortly after the tenant vacated the unit. The witness stated that his tenancy began on April 15, 2008 and ended February 28, 2009. The witness testified that the landlord did not conduct a move-in inspection report, that the landlord offered the tenant the rental unit in an "as is" state with the agreement that the witness would clean the rental unit. The witness stated that even though nothing had been done to the rental unit after the previous tenant moved out, the witness was required to pay \$325.00 as a damage deposit and that the witness had paid \$100.00 towards the pet deposit.

The tenant testified that she sent the landlord a registered letter on March 18, 2009, less than one year after her tenancy ended on April 10, 2008, advising the landlord of her forwarding address and requesting the return of her deposits. The tenant requested permission to fax the Dispute Resolution Officer a copy of the aforementioned letter. The tenant provided the Canada Post tracking number in her testimony.

The tenant stated that when she did not receive a response from the landlord, to her request for the return of her deposits, she filed an application for dispute resolution on April 9, 2009. The tenant is requesting a Monetary Order for return of her \$325.00 security deposit and \$290.00 pet deposit.

Analysis

I find that in order to justify payment of a loss under section 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 losses to the Applicant tenant pursuant to section 7. It is important to note that in a claim for 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

Given the evidence before me, in the absence of any evidence from the landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the tenant and corroborated by her witness.

The tenant faxed the Residential Tenancy Branch a copy of the letter she had sent to the landlord on March 18, 2009 via registered mail and requested that it be accepted as late evidence. I have accepted the late evidence and considered it in my decision. So as not to unfairly prejudice one party over the other, a copy of the late evidence is attached at the end of this decision.

In the absence of a written tenancy agreement in support of the tenant's claim for return of her security and pet deposit, I am required to consider the tenant's evidence not on the basis of whether her testimony "carried the conviction of the truth", but rather to

assess her evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

Based on the aforementioned, I hereby find that the tenant did pay a security deposit of \$325.00 and a pet deposit of \$290.00 and that the tenant has provided the landlord her forwarding address in writing and requested return of her deposits on March 23, 2009, five days after the request was sent via registered mail.

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 and pet deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit or pet damage.

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 loss as listed above and approve her claim for the return of double the security and pet deposits.

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

Doubled Pet Deposit and Security Deposit (\$290.00 + \$325.00) x 2	\$1,230.00
Interest owed on the total amount of the Security and Pet Deposit \$615.00 from March 23, 2009	0.00
TOTAL AMOUNT DUE TO THE TENANT	\$1,230.00

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 \$801.81. 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 03, 2009.

Dispute Resolution Officer