DECISION AND REASONS

Dispute codes

MNSD

Introduction

This hearing was convened in response to an application by the tenant for the return of all or part of the security deposit, and compensation under section 38 of the Residential Tenancy Act, for double the security deposit.

Both parties attended the hearing and participated in the hearing via submissions and affirmed testimony within the hearing.

At the outset of the hearing the landlord requested to adjourn this matter to a later time, preferably until September alongside the Landlord's application / dispute resolution hearing date, as the landlord recently experienced a loss in the family. The tenant was opposed to the adjournment request. I determined this matter proceed on its merits.

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 (the Act).*

Issue(s) to be determined

Is the tenant entitled to the monetary amount(s) claimed?

Background and evidence

This tenancy began February 1, 2008 and ended July 01, 2009. Rent was $3950 per month payable on the first day of each month. At the outset of the tenancy the landlord collected monetary deposits from the tenant in the quantum of $3950 – itemized in the tenancy agreement as: "security deposit for the premises of $1975", and "security deposit for the furniture of $1975".

Neither party conducted, or participated in a *start of tenancy inspection* or *end of tenancy inspection* of the rental unit.

The tenant's testimony is that on July 03, 2008 the tenant provided the landlord with his forwarding address in writing. The landlord disputes the tenant's testimony in this

regard, and testified he denies receiving the tenant's forwarding address on July 03, 200, in writing, or by other means.

The tenant provided testimony and a copy of an e-mail dated July 06, 2008 in which the landlord requests for the tenant to provide him with a forwarding address. The tenant further provided an e-mail to the landlord dated July 20, 2008 purportedly providing the landlord with a forwarding address. The landlord claimed not to be able to acknowledge receiving that e-mail, and each provided their own selections of running e-mail dialogues intended to show some continuity of thoughts and actions by the parties. None of the e-mails submitted confirms the landlord ever received the tenant's forwarding address.

Analysis

I find the parties' e-mail selections, intentionally or inadvertently, do not offer very usable or compelling evidence.

Section 20(b) of the Act prohibits the landlord from requiring or accepting more than one security deposit in respect to a tenancy agreement. Regardless of how the components of the tenant's security deposits are termed or itemized, in this matter, the amount of the tenant's security deposit is the quantum of all security deposits in the amount of $3950.

On the testimony of the parties, and on the preponderance of the evidence, I find the landlord was not in possession of a forwarding address by the tenant until recently when notified of the tenant's application for dispute resolution; and, in the absence of evidence the landlord received the tenant's forwarding address, I find the tenant is therefore not entitled to compensation under Section 38(6) of the Act, and double the security deposit.

The landlord is deemed to be in possession of the tenant's forwarding address as of this hearing date.

I find that in the absence of a start and end of tenancy inspection by both parties, and an agreement between them in respect to the security deposit, the tenant is entitled to the return of the full amount of the original, or root security deposit, plus accrued interest.

Conclusion

I order that the landlord return the security deposit and accrued interest of $4004.23. I grant the tenant a monetary order under section 67 in the amount of **$4004.23**.   If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 11, 2009.