



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with the tenant's application for double the return of the security deposit and recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the landlord did not appear.

Issue to be decided

- Whether the tenant is entitled to a monetary order under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the original term of tenancy was from November 1, 2007 to October 31, 2008. Thereafter, tenancy continued on a month-to-month basis. Rent in the amount of \$1,750.00 was payable on the first day of the month, and a security deposit of \$875.00 was collected on November 1, 2007. After notifying the landlord in early February 2009 of her intention to move, the tenant vacated the unit and tenancy ended on February 28, 2009.

The tenant provided the landlord with details of her forwarding address on the move-out condition inspection report which was completed on February 28, 2009. However, the tenant's security deposit has not subsequently been returned. The tenant acknowledges the landlord's view which is that he is entitled to retain the security deposit in lieu of lost rental income for March 2009, in addition to recovery of a fine levied by the strata council in relation to her move-out.

Analysis

Based on the documentary evidence and undisputed testimony of the tenant, I find that the landlord was properly served with the application for dispute resolution and notice of hearing package.

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**. Specifically, section 38(1) states:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(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;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, section 38(6) of the Act provides:

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

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

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

The landlord neither repaid the tenant's security deposit, nor filed an application for dispute resolution, within 15 days after the end of tenancy and being informed of the tenant's forwarding address on February 28, 2009. Accordingly, pursuant to the above statutory provisions I find that the tenant is entitled to double the return of her security deposit in the amount of \$1,750.00 (\$875.00 x 2), plus interest on the original amount of the security deposit of \$15.35. As the outcome of this hearing favours the tenant, I also find the tenant is entitled to recovery of the \$50.00 filing fee.

As for the monetary order, I therefore find that the tenant has established a claim of \$1,815.35 (\$1,750.00 + \$15.35 + \$50.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of **\$1,815.35**. This order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: June 30, 2009

Dispute Resolution Officer