

DECISION

Dispute Codes MNSD

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.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord by the Tenant, in the presence of the Tenant's witness, at the rental building on May 3, 2009.

The Landlord, the Tenant, and the Tenant's Witness 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 under sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on March 1, 2009 with rent payable on the first of each month in the amount of \$740.00. The rental unit was shared between two tenants with the Tenant's share of the rent being \$370.00. The Tenant paid a total of \$170.00 towards his security deposit, in small payments, with the last payment made on March 7, 2009. The tenancy ended when the Tenant vacated the rental unit on April 5, 2009 after being issued a 10 Day Notice to End Tenancy for unpaid rent. These facts are not in dispute.

The Landlord testified that he did not have a written tenancy agreement with the Tenant and that he did not complete a move-in or a move-out inspection report.

The Tenant testified that he tried to serve the Landlord with his written forwarding address on April 13, 2009 but that the Landlord refused to take the envelope from him stating "I don't want anything from you, I know more than you and them" and that the Tenant interpreted that the Landlord was telling him that the Landlord knew more than the Rental Man. The Tenant supplied copies of the document he tried to serve the Landlord in is documentary evidence.

The Tenant's Witness testified to being present on April 13, 2009 and witnessed the Landlord's refusal of the documents and the Landlord telling the Tenant that he knew more that the Tenant and "them" did.

The Landlord first stated that he did not receive the Tenant's address in writing until he received the notice of the Tenant's dispute application and then later stated that he did have a meeting with the Tenant, in the presence of the Tenant's witness but that the Landlord was not given an envelope or any papers from the Tenant. After further questioning the Landlord testified that on April 13, 2009 the Tenant did attempt to give the Landlord an envelope, that the Landlord did not know what was in the envelope and the Landlord told the Tenant "no" when the Tenant tried to give the Landlord the papers.

The Landlord testified that as of today's date he has not returned any portion of the Tenant's security deposit to the Tenant and the Landlord has not applied for dispute resolution to retain the Tenant's security deposit. The Landlord argued that the Tenant had not paid rent and did not steam clean the carpet.

Analysis

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.

In this situation the Tenant tried to provide the Landlord with his forwarding address on April 13, 2009 but the Landlord refused to accept it. The Landlord confirmed that he received the Tenant's forwarding address in writing when he received a copy of the Tenant's application in the Dispute Resolution package on May 3, 2009.

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 deposit and the Landlord must pay the tenant double the amount of the security deposit.

I do not accept the Landlord's argument that the Landlord's violation was somehow excused due to the Tenant's alleged failure to comply with the Act or agreement by not paying rent or not steam cleaning the carpet. Even if the Tenant was found to be in violation of the Act, there is no provision in the Act that extends immunity for a reciprocal breach on the part of a Landlord.

Based on the above, I hereby approve the Tenant's claim for the return of double the security deposit.

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

Return of double the Security Deposit 2 x \$170.00	\$340.00
Interest owed on the Security Deposit	0.00
TOTAL AMOUNT DUE TO THE TENANT	\$340.00

In regards to the landlord's claims and evidence relating to unpaid rent and a dirty carpet, I am not able to hear or 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 their claims in a separate application and to resubmit their evidence if the Landlord wants to pursue their claims.

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 \$340.00. 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: July 30, 2009.

Dispute Resolution Officer