

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.

The application for dispute resolution was filed on behalf of the tenant by the Agent for the tenant. Both the tenant and the agent attended the hearing. As the tenant's first name was omitted from the original application, the application is hereby amended by consent as inclusive of the intended tenant.

Both the tenant and the landlord attended the conference call hearing and fully participated via submissions and affirmed testimony within the hearing.

Issue(s) to be determined

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

Background and evidence

There is considerable contrast in the testimony and evidence of the parties.

The tenant claims that the tenancy began July 01, 2008 with the applicant tenant and a co-tenant (2). The co-tenant left in September 2008 and the applicant remained on their own to March 31, 2009.

The landlord claims the tenancy began July 01, 2008 with two (2) tenants, but only one named tenant on the tenancy agreement – the applicant tenant. On September 30, 2008 the applicant tenant vacated and the remaining tenant signed a *new* tenancy agreement from October 01, 2009, and subsequently vacated the rental unit on March 20, 2009. The landlord has provided the two (2) tenancy agreements, each singularly signed by the respective tenants. What is relevant is that at the outset of the tenancy on July 01, 2009 the landlord collected a security deposit from both tenant(s) in the amount of \$500.

The landlord testified that the security deposit simply was permitted to, "roll into the new tenancy agreement of October 01, 2008", and this is reflected in both tenancy agreements submitted. Therefore, the landlord's thinking and position is that the security deposit belongs to the later tenant – and not the applicant. The tenant testified that to their thinking and as to their position the security deposit remained with the landlord and is claimable by the applicant tenant. What is relevant is that the security deposit originated from both tenants on July 01, 2008, and the landlord held it and holds it to this day.

It is undisputed that neither party conducted, or participated in a *start of tenancy inspection* or *end of tenancy inspection* of the rental unit – whether in September 2008 or March 2009.

The tenant's testimony is that at the end of the tenancy in March 2009 the tenant provided the landlord with his forwarding address via an e-mail, but did not provide this e-mail as evidence.

Although the landlord disputes the tenant's testimony; she has, however, provided a copy of an e-mail dated April 01, 2009 6:26 a.m. from the tenant's agent (and co-applicant in this application) which clearly states to, "*send the security refund cheque*", to the, "*address as mentioned below*". This is the same address as also provided on this application for the tenant / applicant.

The landlord testified that she is still holding the security deposit in the amount of \$500.

Analysis

I find that regardless of which tenant is claiming the security deposit, the deposit originated with both, or either of them.

On the testimony of the parties, and on the preponderance of all the evidence, **I find** the tenant provided the landlord with (their) written forwarding address on April 01, 2009.

The landlord has not returned the security deposit or applied for dispute resolution.

Section 38 of the Residential Tenancy Act (the Act) provides as follows:

Section 38(1) of the Act provides as follows:

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

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

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

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The Act requires that 15 days after the later of, the end of tenancy, and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

I find it is irrelevant whether the tenancy ended on September 30, 2008 or March 20, 2009 as disputed by the parties. Within one year (Section 39 of the Act), the tenant provided (their) forwarding address in writing - April 01, 2009. **I further find** that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing.

I find that the tenant has established a claim for the security deposit of \$500, accrued interest of \$3.77, and double the original amount of the security deposit in the amount of \$500, for a total of **\$1003.77**.

Conclusion

I grant the tenant a monetary order under section 67 in the amount of **\$1003.77**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 23, 2009.