

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlord for this application.

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 May 26, 2009. Mail receipt numbers were provided in the Tenant's evidence. The Landlord was deemed to be served the hearing documents on May 31, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Female Tenant appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. The Landlord did not attend despite being served notice of today's hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Are the Tenants entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy began as a fixed term tenancy commencing on December 1, 2008 and expired on February 28, 2009. The Tenant testified that a second fixed term tenancy was entered into with the Landlord for the period of May 1, 2009 and was set to expire on July 30, 2009. Rent was payable on the first of each month in the amount of \$850.00 and a security deposit of \$425.00 was paid on or before December 1, 2008.

The Tenant testified that she had a verbal agreement with the Landlord whereby the Tenants only needed to provide the Landlord with thirty days notice to end the tenancy because the Male Tenant was a member of the Navy and could be transferred.

The Tenant referred to her documentary evidence whereby she informed the Landlord on March 31, 2009 that they were going to have to move out of the rental unit earlier than expected and that they would have the rental unit vacated by May 1, 2009.

The Tenant argued that the Landlord was in agreement to ending the tenancy early, that the Tenants assisted the Landlord in showing the unit as the Landlord was going into the hospital, and as supported by her documentary evidence, the Landlord was able to re-rent the unit as of May 1, 2009.

The Tenant testified that the Landlord called them on May 1, 2009 at 7:00 a.m. to advise them that the new tenants were moving in while the Tenants will be moving out. The Tenant stated that the new tenants were waiting outside of the rental unit on May 1, 2009 wanting to move their possessions into the rental unit as the Tenants were moving out and that the Landlord allowed the new tenants to enter the rental unit prior to the Tenants getting all of their possessions out. The Tenant stated that the Landlord did not complete a move out inspection prior to the new tenants moving in.

The Tenant referred to her documentary evidence in support of her testimony that she first requested the return of her security deposit and provided the Landlord her forwarding address in writing, via e-mail, on May 3, 2009, and again in a letter sent to the Landlord via registered mail on May 5, 2009.

The Tenant provided documentary evidence that the Tenant sent the Landlord two registered letters, to the Landlord's service address as listed on the Tenants' tenancy agreement, the first envelope with a copy of the Tenants' forwarding address and the second with notice of dispute resolution, and that both registered letters were unclaimed by the Landlord and returned to the Tenant.

The Tenant had e-mail communications with the Landlord up to May 5, 2009, as supported in the Tenant's evidence, in which the Tenant advised the Landlord the registered letters were en route to the Landlord.

Analysis

I find that in order to justify payment of 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 costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

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 their documentary evidence.

Based on the testimony and documentary evidence before me I find that the tenancy ended April 30, 2009, that the Landlord was provided notification via e-mail of the notice to end tenancy, from the Tenants on March 31, 2009, and that the Tenant's forwarding address was received by the Landlord via e-mail on May 3, 2009. I find that the Landlord acted on the e-mail notifications provided by the Tenants and that in doing so the Landlord has waived her right to require formal written notice in the form of written, signed letters. That being said I note that the Landlord was sent formal written notice of the Tenant's forwarding address via registered mail on May 5, 2009 and that registered mail is deemed to be received on the fifth day after it was mailed in accordance with section 90 of the *Act*.

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 case the Landlord was required to return the Tenants' security deposit or file for dispute resolution no later than May 18, 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 and pet deposit and the landlord must pay the tenant double the amount of the security and pet deposit. I find that the Tenants have succeeded in proving the test for damage or loss as listed above and approve their claim for the return of double their security deposit and interest.

I find that the Tenants have succeeded with their application and are entitled to recover the cost of the filing fee from the Landlord.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Doubled Security Deposit 2 x \$425.00	\$850.00
Interest owed on the Security Deposit of \$425.00 from December 1, 2008	0.54
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANTS	\$900.54

Conclusion

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for \$900.54. 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: August 25, 2009.

Dispute Resolution Officer