

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of double the security deposit and to recover the filing fee.

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 March 17, 2009. Mail receipt numbers were provided in the tenant's verbal testimony. The landlord was deemed to be served the hearing documents on March 22, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, 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

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to a Monetary Order under section 38 of the *Act* for return of double the security deposit plus interest

Background and Evidence

The tenant has occupied the rental unit since January 1, 1995 at which time he paid \$225.00 security deposit. The rental unit was sold in January 2008. The tenancy ended on January 31, 2009 at which time the monthly rent was \$520.00.

The landlord testified that she purchased the rental unit, comprising of three separate suites, sometime in 2008 but that she could not remember which month or the exact date. The landlord stated that they purchased the rental unit for their own personal use and subsequently evicted two of the three tenants.

The tenant testified that he vacated the rental unit on Saturday January 31, 2009 after receiving a two month notice to end tenancy in November 2008. The tenant stated that the landlord conducted a walk through inspection after 1:00 pm on January 31, 2009 and that the landlord told the tenant that everything was okay and that she would issue the tenant a refund of his security deposit later that day.

The tenant testified that he moved into a rental unit in the house next door to the previous rental unit and that the landlord came to his new rental unit later on January 31, 2009 and handed him a cheque in the amount of \$219.19 as refund of his security deposit. The tenant stated that he asked the landlord why he wasn't being reimbursed the full security deposit and that the landlord replied by saying the banks are not paying high interest these days.

The landlord testified that she did not complete a move-in inspection report when she took ownership of the rental property, and that she did do a walk through move-out inspection with the tenant on January 31, 2009 but did not issue a written report to the tenant. The landlord testified that there were still people in the rental unit assisting the tenant with cleaning at the time she did the walk through and the landlord didn't want to deal with anything with the tenant. The landlord stated that she just wanted things to be dealt with and over with this tenant so she didn't mention anything about the condition of the rental unit.

The landlord stated that she thought the tenant told her that he had paid \$200.00 in security deposit and that she did not or could not find documentation from her lawyer which stipulated the security deposit amount transferred in the sale of the rental unit. The landlord stated that she manually calculated interest owed on \$200.00 based on a

chart of past interest rates, which was given to her from a friend, which is how she determined the security deposit refund of \$219.19.

The tenant testified that although the landlord knew that he had moved next door, by the fact that she came over with the portion of security deposit refund, he still sent the landlord a registered letter on February 16, 2009 advising the landlord of his forwarding address in writing, and requesting the return of the balance of his security deposit and interest. The tenant testified that the landlord did not issue a payment for the balance of his security deposit or interest.

The landlord confirmed that she told the tenant everything was okay with the suite when he moved out and that she realized later that the carpets needed to be steam cleaned. The landlord submitted into evidence a copy of a receipt showing the purchase of carpet cleaning and the rental of a steam cleaner as justification for short paying the tenant's refund of his security deposit.

Analysis

The landlord testified that she did not provide the tenant with a written copy of the move out inspection report. I find the landlord in contravention of section 35(3) of the *Residential Tenancy Act*.

Based on the foregoing I find that the landlord made an inspection with the tenant but did not complete the condition inspection report and did not give the tenant a copy of the report in accordance with the regulations. I find that the landlord has extinguished her right to claim against the security deposit for damage or loss pursuant to section 36(2)(c) of the *Act*.

I also find that the landlord is in violation of Section 38(1) of the *Act* which stipulates that the landlord must return the security deposit and interest within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding

address in writing. Based on the foregoing I find that the tenant is entitled to have doubled the security deposit plus interest pursuant to section 38(6) and that the landlord is not entitled to make a claim against the security deposit.

I find that the tenant is entitled to a monetary claim and that the tenant is entitled to recover the filing fee from the landlord as follows:

Double the Security Deposit \$225.00 x 2	\$450.00
Interest on \$225.00 from January 1, 1995 to January 31, 2009	46.47
Filing fee	50.00
Sub total (Monetary Order in favor of the tenant)	\$546.47
Less Security Deposit refunded on February 1, 2009	- 219.19
TOTAL AMOUNT DUE TO THE TENANT	\$327.28

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 \$327.28. The order must be served on the respondent landlord and is enforceable through the Provincial Court and enforced 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: May 04, 2009.

Dispute Resolution Officer