

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to recover double his security deposit from the landlord.

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 February 25, 2009. Mail receipt numbers were provided in the tenant's verbal testimony. The landlord was deemed to be served the hearing documents on March 2, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

The landlord did not appear despite being properly served with the hearing documents.

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 for double his security deposit.

Background and Evidence

The tenancy was a month to month tenancy which began October 1, 2004 and ended November 30, 2008. The tenant moved into the rental unit around December 1, 2004 after marrying the existing tenant. A security deposit was paid in the amount of \$370.00.

On October 31, 2008 the tenant provided the landlord with 1 month written notice to end tenancy effective November 30, 2008. The tenant provided the landlord with written notification of his forwarding address on November 30, 2008 and requested the return of his full damage deposit.

The tenant testified that shortly after giving his notice to end the tenancy the landlord showed his rental unit to a prospective new renter. The tenant stated that when he was moving out, the new renters who saw the suite shortly after he gave notice, were moving in.

The tenant stated that the landlord completed a move-out inspection report and that the landlord told him that the notations "DS" were in relation to the small nail holes that were left in the walls after the tenant removed his pictures. The tenant advised that he painted the rental unit about one or two years prior to his departure as the landlord refused to paint the unit.

The tenant stated that the only item that was discussed as being damaged, with the landlord, was the closet door in the master bedroom. The tenant testified that the closet door was accidentally damaged when his furniture was moved out.

The tenant testified that the carpets were replaced about one month prior to his vacating the rental unit.

The tenant testified that the name listed on page three of the move out inspection was that of his ex-wife, who vacated the rental unit prior to the end of the tenancy, and that she was not present during the move out inspection and could not agree or disagree to the inspection report. The tenant stated that he signed the move out inspection report based on the landlord's explanation.

The tenant entered into evidence a letter from the landlord dated December 2, 2008 listing that the tenancy began October 1, 2004, and which listed items charged against the security deposit.

The tenant testified that he did not agree to allow the landlord to retain any portion of his security deposit and he is requesting that it be returned to him in full.

Analysis

Section 38 of the *Residential Tenancy Act* stipulates the following:

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.

As the tenant provided his forwarding address in writing on November 30, 2008, the same date he vacated the rental unit, the landlord had until December 15, 2008 to either return the damage deposit to the tenant or to apply to the Residential Tenancy Branch for Dispute Resolution. I find that the landlord did not return the damage deposit nor did they apply for Dispute Resolution within the prescribed time frames so I find that the landlord is in violation of section 38 of the *Residential Tenancy Act*.

Section 38 (6) of the *Residential Tenancy Act* stipulations that if a landlord does not comply with subsection (1) as listed above, 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.

Monetary Order – Based on the aforementioned, I find that the tenant is entitled to a monetary claim, that this claim meets the criteria under section 38 (6) of the *Act* as follows:

Double the Security Deposit \$370.00 x 2	\$740.00
Interest owed on \$370 security deposit from October 1, 2004	<u>13.10</u>
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$753.10

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 \$753.10. The order must be served on the 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: May 12, 2009.

Dispute Resolution Officer