

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double their security deposit.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served in person by the Tenant to the Landlord on June 4, 2009. The Landlord confirmed receipt of the hearing package.

The Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Tenant did not receive a copy of the Landlord's evidence package but did receive a copy of a letter issued by the Landlord and dated August 3, 2009. The Landlord confirmed that he did not send the Tenant a copy of his evidence. Both parties were informed that the Landlord's evidence was not provided to the Tenant in accordance with the *Residential Tenancy Rules of Procedure* and that the Landlord's evidence will not be considered in my decision. All of the testimony was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on February 20, 2009 and rent was payable on the first of each month in the amount of \$450.00. The Tenant paid a security deposit of \$225.00 on February 11, 2009.

The Tenant advised that the tenancy ended on April 1, 2009 when he vacated the rental unit. The Tenant argued that he provided the Landlord with written notice to end the

tenancy on March 13, 2009 with an effective date of April 1, 2009 and that this notice included his forwarding address.

The Landlord testified that he received the notice to end tenancy from the Tenant on March 15, 2009 and that the Tenant did not vacate the rental unit until April 7, 2009. The Landlord argued that he received two notices from the Tenant; the first was received on March 15, 2009, was dated February 28, 2009 and did not include the Tenant's forwarding address. The Landlord stated that he received a second notice on April 1, 2009 and that this notice listed the Tenant's forwarding address and a request for the return of the Tenant's security deposit.

The Landlord testified that he did not return the Tenant's security deposit and that the Landlord did not apply for dispute resolution for an Order to keep the security deposit. The Landlord claims that the Tenant failed to provide him with proper thirty days notice to end tenancy and that the Tenant failed to pay April 2009 rent.

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.

Based on the testimony and documentary evidence before me I find that the tenancy ended in April 2009, that the Landlord was provided notification in writing of the notice to end tenancy from the Tenant on March 15, 2009, and that the Tenant's forwarding address was received by the Landlord in writing on April 1, 2009 along with the Tenant's request for the return of his security deposit.

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 deposit. In this case the Landlord was required to return the Tenant's security deposit or file for dispute resolution no later than April 22, 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 Tenant has succeeded in proving the test for damage or loss as listed above and I approve his claim for the return of double the security deposit and interest in the amount of \$450.00 (\$225.00 + \$225.00 + \$0.00 interest)

I do not accept the Landlord's argument that the Landlord's violation of withholding the security deposit was somehow excused due to the Tenant's alleged failure to comply with the Act of not providing proper notice to end tenancy. 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.

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 \$450.00. 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: September 11, 2009.

Dispute Resolution Officer