



Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC,FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the amount of the security deposit and compensation under Section 38 of the Residential Tenancy Act (the Act). The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both, the tenant and the landlord were represented at today's hearing and each provided submissions and testimony in this proceeding.

During the hearing, the tenant amended their application to reflect a subtraction of \$858.45 from their total original claim on application.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed facts before me are as follows. The tenancy began on April 01, 2008 and ended on April 30, 2008. The landlord collected a security deposit of \$750 at the outset of the tenancy. Prior to the tenants vacating the rental unit, the landlord had received and was in possession of the tenant's forwarding address in writing. On April 30, 2009 an end of tenancy inspection was conducted by the tenant and landlord's representative. Neither the landlord nor tenant has provided any record of such an inspection. However, it is not disputed that as a result there was no agreement that any deduction from the security deposit would be made.

On receiving the tenant's Notice for Dispute Resolution package, the landlord determined to forward to the tenant a cheque for \$758.45 – which the tenant received.

Analysis

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.

I find that the landlord failed to repay the security deposit or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

- 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 landlord held a security deposit of **\$750** and was obligated under section 38 to return this amount together with the **\$8.45** in interest which had accrued. The amount which is doubled is the \$750 base amount of the deposit before interest.

The landlord eventually returned \$758.45, and the tenant determined to subtract \$100 from their claim. Therefore:

Original security deposit	750.00
Accrued interest	8.45
Double of original security deposit	750.00
Amount returned by landlord	-758.45
Amount reduced by tenant	-100
Owed by landlord to tenant	\$ 650

I find that the tenant has established a claim for **\$650**. The tenant is also entitled to recovery of the **\$50** filing fee for a total entitlement of **\$700**.

Conclusion

I grant the tenant an order under section 67 for the sum of **\$700**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated September 14, 2009.