



Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

DECISION AND REASONS

Introduction

This hearing was convened in response to an application by the landlord and an application by the tenant. Both the landlord and the tenant appeared in the conference call hearing and provided solemnly affirmed testimony.

The landlord applied for unpaid rent in the amount of \$2600.

The tenant applied for double return the security deposit under Section 38 of the Residential Tenancy Act (the Act) and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement - for \$7900 - full return of the entire rent paid during the tenancy.

Issue(s) to be determined

Is the landlord entitled to the monetary amount claimed?

Is the tenant entitled to the monetary amount claimed?

Background and evidence

Neither applicant provided submissions to this hearing, or any material, or documentary evidence in support of their applications. During the hearing the landlord determined to **withdraw** their application, and it is hereby withdrawn with leave to reapply.

The tenant's application proceeded on its merits. During the hearing the tenant amended their claim and determined to only seek return of double the security deposit, and the filing fee of \$100; therefore, the tenant's portion of their claim for damage and loss is hereby **dismissed** without leave to reapply.

The undisputed testimony in the hearing is as follows:

There is no written tenancy agreement between the parties. The tenancy began December 15, 2008 and ended on May 29, or June 07, 2009 (contrasting testimony) under conditions disputed by the parties. Rent was \$1300 per month payable on the 1st of each month. At the outset of the tenancy the landlord collected a security deposit of \$650 which the landlord holds.

The parties are not in agreement on any other testimony advanced by each of them in the hearing in respect to any of their claims, and neither party was able to substantiate or corroborate any of their claims.

The tenant claims they provided the landlord with a forwarding address by e-mail some time in June 2009. The landlord dispute the tenant's claim that he was provided with the tenant's forwarding address, by any means. Regardless, on June 11, 2009, the landlord applied for Unpaid Rent, but did not apply to retain the security deposit – and at the time of application, the landlord was in possession of a forwarding address for the tenant, as identified in the landlord's application for dispute resolution. The landlord cannot now claim that he is still waiting for the tenant to provide a written forwarding address before returning the deposit or making claim for it.

Analysis

For the benefit of both parties, It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

Therefore, a claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage or loss, and that it

stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

In respect to the tenant's claim of the security deposit:

Section 38 of the Residential Tenancy Act provides as follows:

Section 38(1)

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.

Further: 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 Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

On preponderance of the evidence, and on the balance of probabilities, **I find** that the tenancy ended on or before June 07, 2009, and that the tenant provided a forwarding address in writing on or before June 11, 2009 - the date of the landlord's application.

I further find that the landlord has failed to repay the security deposit or make an application for dispute resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address.

I find that the tenant has established a claim for the security deposit of \$650, accrued interest of \$0.45, and double the base amount of the security deposit in the amount of \$650, for a total of **\$1300.45**. As I have found the tenant's claim has considerably less merit than the claim on application **I grant** the tenant proportional recovery of the filing fee for this application in the amount of \$20 for a quantum entitlement to the tenant in the amount of **\$1320.45**

Conclusion

The tenant is being given an Order under Section 67 of the Act for **\$1320.45**.

If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated September 23, 2009.