

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application from the tenant for a monetary order for double the amount of the security deposit, in addition to recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the landlord did not appear.

Issues to be decided

- Whether the tenant is entitled to either or both of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the year-long term of tenancy began on October 1, 2007. Following the end of the term, tenancy continued on a month-to-month basis until December 31, 2008. Rent in the amount of \$895.00 was payable in advance on the first day of each month, and a security deposit of \$447.50 was collected on September 14, 2007.

The tenant testified that he provided the landlord with written notice in November 2008 of his intent to vacate the unit at the end of December 2008. Both parties participated in the completion of a move-out condition inspection and report on December 31, 2008. The tenant testified that he provided his forwarding address on the move-out condition inspection report but did not subsequently receive a copy of the report. He further stated that at the time of the move-out condition inspection there were no concerns identified by the landlord in regard to the condition of the unit. Subsequently, the tenant sent a letter by registered mail to the landlord in May 2009, in which he again provided his forwarding address and requested the return of his security deposit. To date, the tenant states he has had no response from the landlord.

Analysis

Based on the documentary evidence and undisputed testimony of the tenant, I find that the landlord was properly served with the application for dispute resolution and notice of hearing.

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part, as follows:

38(1) Except as provided in subsection (3) or (4), 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.

Further, section 38(6) of the Act provides:

38(6) If a landlord does not comply with subsection (1), 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.

I find that the landlord failed to comply with the statutory provisions set out in section 38(1) of the Act, as above. Therefore, pursuant to section 38(6) of the Act I find that the tenant is entitled to return of double the amount of the security deposit.

In summary, as for the monetary order, I find that the tenant has established a claim of \$953.74. This is comprised of \$895.00 calculated as double the amount of the security deposit (2 x \$447.50), interest of \$8.74 calculated on the original amount of the security deposit, in addition to the \$50.00 filing fee. Accordingly, I grant the tenant a monetary order under section 67 of the Act for \$953.74.

Conclusion

Following from all of the above and pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of **\$953.74**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: December 10, 2009

Dispute Resolution Officer