

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double his security deposit and to recover the cost of the filing fee from the Landlord for this application.

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

Both the Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on September 1, 1997 and ended when the Tenant vacated the rental unit on approximately June 29, 2009.

The Tenant testified that he attended a move-out inspection on June 29, 2009, that he agreed to allow the Landlord to deduct \$60.00 from his security deposit for carpet cleaning and that he signed the document and wrote his forwarding address on the move-out inspection form.

The Tenant referred to his written statement that he provided with his application and confirmed that he requested the return of his security deposit on June 29, 2009 and July 21, 2009, and when he still hadn't received the deposit by August 11, 2009 he filed his application for dispute resolution.

The Tenant argued that he received a cheque which was mailed to him on August 17, 2009, from the Landlord, for the return of his security deposit in the amount of \$219.68. The Tenant is wishing to proceed with his claim for the balance owing of double the security deposit.

The Landlord testified that security deposit refunds are handled out of their Toronto office and that a cheque was sent to the Tenant on June 29, 2009 but that the envelope was returned with an incomplete address. The Landlord argued that a second cheque was sent on July 7, 2009 and it was also returned to the Landlord and subsequently cancelled. The Landlord stated that a third cheque was issued August 8, 2009 and sent to the Tenant listing the Tenant's full address. The Landlord confirmed that there was no documentary evidence submitted in their defence.

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 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.

In this case the Landlord testified that payments are issued out of Toronto and that allegedly a cheque was issued to the Tenant on the same date that the move-out inspection was completed. One could question how the Landlord could manage to have a cheque issued to the Tenant on the same day of the inspection when the documentation with the Tenant's forwarding address had to be sent back east to their Landlord's head office before such a cheque could be mailed. The Landlord also stated that after the first cheque was returned with an incorrect address they sent a second cheque to the exact same address without verifying that they had the full and correct address. The above leads me to question if it is merely a coincidence that a cheque was mailed to the Tenant, at the correct address, six days after the Landlord was personally served with notice of the Tenant's application for dispute resolution, or if this was truly the first attempt made by the Landlord to return the Tenant's security deposit.

In the presence of supported testimony by the Landlord and the Tenant, I find that the Tenant has proven that he provided the Landlord with written notification of his forwarding address on the move-out inspection report dated June 29, 2009 and that he

did not receive a partial payment of the return of his security deposit until approximately August 20, 2009.

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 deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit or file for dispute resolution no later than July 14, 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 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 his security deposit plus interest less the agreed \$60.00 for carpet cleaning and less the first payment of \$219.68.

I find that the Tenant has succeeded with his application and that he is entitled to recover the cost of the filing fee from the Landlord.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Doubled Security Deposit 2 x (\$247.50 - \$60.00) less for carpet cleaning deduction	\$375.00
Interest owed on the Security Deposit of \$247.50 from September 1, 1997 to December 3, 2009	32.18
Filing Fee	<u>50.00</u>
SUBTOTAL DUE TO THE TENANT	\$457.18
Less payment issued by Landlord August 17, 2009	<u>-219.68</u>
TOTAL AMOUNT DUE TO THE TENANT	\$237.50

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 \$237.50. 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: December 03, 2009.

Dispute Resolution Officer