

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenants seeking return of her security deposit in double on the grounds that the landlord did not return it or make application to claim upon them within 15 days of the end of the tenancy as required under section 38(1) of the *Act*. The tenants also seek to recover the filing fee for this proceeding from the landlord.

Despite having been sent the Notice of Hearing on September 1, 2009 by registered mail, the landlord did not call in to the number provided to enable participation in the telephone conference call hearing. While Canada Post's tracking numbers show that the item was refused by the landlord, the tenants have met the service requirements of section 89 of the *Act* and the hearing proceeded in the absence of the landlord.

Issue(s) to be Decided

This matter requires a decision on whether the tenants are entitled to a Monetary Order for return of the security deposit in double and recovery of the filing fee for this proceeding.

Background and Evidence

This tenancy began on February 28, 2008 and ended on July 31, 2009 when the tenancy relocated from another rental unit in the building under a new rental agreement and new security deposit. Rent was \$1,000 per month and the landlord held a security deposit of \$500.

During the hearing, the tenant submitted a copy of the tenants' notice to end tenancy dated June 29, 2009, providing the forwarding address in the same building and requesting return of the security deposit. The move-out condition inspection report recorded no deficiencies and the tenants were led to believe the security deposit would be returned.

The tenant further stated that, on August 20, 2009, the tenants received a cheque for \$305.61 with a cover letter noting that the landlord had retained \$200 for painting. The tenants had not agreed to the painting, and while the cheque was dated August 1, 2009 and the cover letter dated August 4, 2009, the tenant had noted that the package was not received until August 20, 2009. The tenants did not cash the cheque.

The cover letter invited any enquiries about the security deposit along with any substantiating data be sent to an email address or fax number given in the letter and giving assurance that a query would be "responded to in kind."

The tenant submitted copies of emails she had sent to the landlord dated August 20, 2009 and August 27, 2009 addressing her disagreement with the deduction from the security deposit but received no reply. When she attempted to address the matter with the resident manager of the day, she was referred to the corporate landlord and advised that the resident manager was not her secretary.

Analysis

Section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, unless the tenant agrees otherwise, the landlord must either return the security deposit or make application for dispute resolution to claim upon it.

Section 38(6) of the *Act* states that, if the landlord does not comply with subsection (1), the landlord "must" pay the tenant double the amount of the deposit.

I accept the evidence of the tenant that the partial payment was not received until August 20, 2009 and that the cheque has still not been cashed and may be stale dated.

Therefore, I find that the landlord failed to return the security deposit within 15 days of the end of the tenancy and that the landlord had no right to retain a portion of the deposit by virtue of tenants' consent or application for dispute resolution as required. Therefore, I find that the tenants are entitled to return of the security deposit in double.

The tenant has agreed, and I hereby order that the cheque dated August 1, 2009 for \$305.61 be returned to the building manager to whom the rent is paid and that the tenants be given documentary acknowledgement of its return.

I further order, pursuant to section 72(2)(a) that the tenants may recover the amount owed to them, including recovery of the filing fee for this proceeding, by withholding the amounts from future rent calculated as follows:

Security deposit	\$ 500.00
Interest February 28, 2008 to date)	6.31
To double security deposit	500.00
Filing fee	<u>50.00</u>
TOTAL	\$1.056.31

Conclusion

I hereby authorize and order that tenants, xxxxxxxxxxxxxxxxxxxx, tenants, may withhold \$1,056.31 from the next future rent owed to xxxxxxxxxxxx, landlord, in satisfaction of money owed to them by the landlord.