

## **Decision**

**Dispute Codes:** MNSD, FF

### **Introduction**

This hearing dealt with the tenants' application for a monetary order for double the return of the security deposit, in addition to recovery of the filing fee. The tenants participated in the hearing and gave affirmed testimony. The application for dispute resolution and notice of hearing were sent to the landlords by way of registered mail, however, Canada Post's on-line tracking shows that the landlords refused delivery of the package. While the landlords did not appear at the hearing, pursuant to section 90 of the Act, they are deemed to have been served with the application for dispute resolution and notice of hearing.

Further to the above, the tenants state that they also sent the application for dispute resolution and notice of hearing package to the landlords via regular mail, and that the regular mail was not subsequently returned to them.

### **Issues to be decided**

- Whether the tenants are entitled to either or both of the above under the Act

### **Background and Evidence**

There is no written residential tenancy agreement in evidence before me for this month-to-month tenancy which began for tenant "TSC" on December 4, 2006, and began for tenant "AAS" in August 2007. Rent in the amount of \$1,000.00 is payable in advance on the first day of each month. For the purposes of this dispute a security deposit of \$500.00 was collected on December 4, 2006.

By letter dated in late July 2009, the tenants gave notice to the landlords of their intent to end the tenancy effective at the end of August 2009. A copy of this letter is not in evidence before me, however, the tenants testified that this letter also includes their

forwarding address. Ultimately, the tenants vacated the unit on August 30, 2009. There was no move-out condition inspection or report undertaken by the parties.

The tenants state that a conversation took place between them and the landlords towards the end or shortly after the end of tenancy in regard to return of the security deposit. The tenants state that while they were left with the impression that the full security deposit would be returned to them, they received a cheque from the landlords dated September 21, 2009 in the amount of \$350.00. In other words, the landlords had withheld \$150.00 from the security deposit, apparently in order to offset the cost of carpet cleaning.

Following their receipt of this cheque, by letter to the landlords dated September 18, 2009, the tenants requested return of the balance of the security deposit in the amount of \$150.00 (\$500.00 - \$350.00). However, with the passage of time, as the tenants did not receive any further payment from the landlords they proceeded to file an application for dispute resolution. Subsequently, by letter to the landlords dated September 29, 2009, the tenants again requested that the landlords return the balance of the security deposit, and reimburse the tenants' \$50.00 filing fee, in addition to other costs associated with preparing for the hearing. Thereafter, no further payment was received by the tenants and there has been no direct contact between the parties.

### **Analysis**

Section 35 of the Act speaks to **Condition inspection: end of tenancy**, and provides in part as follows:

35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
- (b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Section 36 of the Act addresses **Consequences for tenant and landlord if report requirements not met**, and provides in part as follows:

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35(2) *[2 opportunities for inspection]*,

(b) having complied with section 35(2), does not participate on either occasion...

Further, section 38 of the Act addresses **Return of security deposit and pet damage deposit**, and provides in part:

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

Finally, 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.

Based on the documentary evidence and undisputed testimony of the tenants, I find as follows:

- that the landlords failed to complete a move-out condition inspection and report;
- that the landlords failed to obtain the written consent of the tenants for withholding of any amount from the security deposit;
- that the landlords failed to return the tenants' security deposit within 15 days after the later of the date the tenancy ended and the date the landlords received the tenants' forwarding address in writing;
- that the landlords did not file an application for dispute resolution claiming against the security deposit within the 15 day period, as above.

In the result, as for the monetary order I find that the tenants have established a claim of \$1,065.30. This is comprised of \$1,000.00 which is double the security deposit (2 x \$500.00), plus interest of \$15.30 which is calculated on the original amount of the security deposit, in addition to the \$50.00 filing fee. As the tenants have already received payment of \$350.00, I grant the tenants a monetary order under section 67 of the Act for the balance due of \$715.30 (\$1,065.30 - \$350.00).

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenants in the amount of **\$715.30**. Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 13, 2010

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Dispute Resolution Officer