

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 her 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*, sent via registered mail on October 8, 2009. Canada Post receipts were submitted in the Tenant's documentary evidence. The Landlord is deemed to be served the hearing documents on October 13, 2009, the fifth day after they were mailed, in accordance with section 90(a) of the *Act*.

The Tenant and her Advocate appeared, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Landlord did not appear despite being served with notice of today's hearing in accordance with the *Act*.

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 May 3, 2009 and ended when the Tenant vacated the rental unit on July 26, 2009. The Tenant paid the rent in full up to August 31, 2009. The monthly rent was payable on the first of each month in the amount of \$740.00 and the Tenant paid a security deposit of \$370.00 on April 28, 2009.

The Tenant testified that after finding bed bugs in her apartment she informed the building manager who advised the Tenant that she would have to hire a pest control company herself. The Tenant argued that she could not afford to pay for pest control and so she provided the Landlord with written notice to end her tenancy on approximately July 5, 2009 along with payment for August 2009 rent.

The Tenant referred to her evidence in support that she provided the Landlord with her forwarding address on July 5, 2009, in her notice to end tenancy and again a second time on July 26, 2009 when she turned in her keys.

The Tenant testified that she received a cheque from the Landlord on October 26, 2009, after the Landlord refused to accept her registered letter, for \$170.00 for return of part of her security deposit.

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.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her Advocate.

I find that the Tenant has proven that she provided the Landlord with written notification of her forwarding address on approximately July 5, 2009 and again on July 26, 2009 and that the Landlord issued a payment to the Tenant for part of her security deposit on October 23, 2009 which was not received by the Tenant until October 26, 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 August 10, 2009.

There is no evidence before me to prove that the Landlord filed for dispute resolution, on or before August 10, 2009, to retain any portion of the security deposit. I also note that it was not until fifteen days after the Tenant sent the Landlord a copy of her dispute resolution application via registered mail that the Landlord issued a cheque for partial refund.

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 now 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 her claim for the return of double her security deposit and interest.

I find that the Tenant has succeeded with her application and that she 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 \$370.00	\$740.00
Interest owed on the Security Deposit of \$370.00 from April 28, 2009 to January 19, 2010	0.00
Filing Fee	50.00
SUBTOTAL DUE TO THE TENANT	\$790.00
Less payment issued by Landlord on Cheque # 0903	-170.00
TOTAL AMOUNT DUE TO THE TENANT	\$620.00

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 \$620.00. 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: January 19, 2010.

Dispute Resolution Officer