

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 the balance of the 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 September 24, 2009. The Landlord's Agent confirmed receipt of the hearing package.

The Landlord's Agent, and both Tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

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 fixed term tenancy began on approximately September 1, 2008 and was set to expire on August 31, 2009. Rent was payable on the first of each month in the amount of \$1,500.00 and a security deposit of \$750.00 was paid by the Tenant on September 1, 2008. A move-in inspection report and a move-out inspection report were completed and signed in the presence of the both parties.

The Tenancy ended on July 31, 2009 as the Landlord sold the property and the Tenants were given notice to vacate the rental unit. The tenancy contract was dealt with and completed with the Landlord named in this proceeding.

The Tenants testified that they provided the Landlord with their forwarding address, in writing, on the move-out inspection form on July 31, 2009. The Tenants received a

cheque in the amount of \$664.95 as reimbursement of part of their security deposit and are claiming for the return of the remaining \$85.05. The Tenants confirmed that they cashed the cheque issued by the Landlord and that it cleared the bank okay.

The Landlord's Agent testified and confirmed that the Landlord has not applied for dispute resolution to keep the security deposit, the Landlord has not been issued an Order granting the Landlord permission to retain \$85.05 of the Tenants' security deposit, nor does the Landlord have written permission from the Tenants to keep any portion of the security deposit.

The Agent argued that the Landlord suffered a loss of \$85.05 when the Tenants set the oven to self clean and the oven door would not open after the cleaning cycle was complete. The problem was the result of packing material left inside the door frame of the oven. The Agent confirmed that the oven was purchased and used by the previous tenants prior to these Tenants occupying the rental unit.

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.

After careful review of the evidence I find that the Landlord failed to return the Tenants' full security deposit plus interest and that the Landlord did not have a Monetary Order or written permission from the Tenants entitling her to retain \$85.05.

I do not accept the Landlord's argument that the Landlord's violation was somehow excused due to the Tenant's alleged failure to remove packing from an oven that was in the rental unit prior to the onset of the tenancy. Even if the Tenant was found to be in violation of the *Act*, there is no provision in the *Act* that extends immunity for a reciprocal breach on the part of a Landlord.

I find that the Tenant has proven that they provided the Landlord with written notification of their forwarding address on the move-out inspection report on July 31, 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 in full or file for dispute resolution no later than August 15, 2009.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and I approve the Tenant's claim for the return of the balance of their security deposit and interest.

I find that the Tenant has succeeded with his application therefore I award him recovery of the \$50.00 filing fee.

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

Balance owing of security deposit	\$85.05
Interest owed on the \$664.95 Security Deposit from September 1, 2008 to August 12, 2009	3.32
Interest owed on the \$85.05 Security Deposit from September 1, 2008 to January 22, 2010	0.43
Filing Fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$138.80

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 **\$138.80**. 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 22, 2010.

Dispute Resolution Officer