

DECISION

Dispute Codes MN SD OFF

Preliminary Issues

At the onset of the hearing I asked the Tenants to clarify what they were seeking with their application as they had selected return of their security deposit, other, and recovery of the filing fee.

The male Tenant advised that they were initially looking to have the return of the original security deposit and to recover the cost of the filing fee.

The female Tenant testified that they are only seeking return of the original amount of the security deposit but that if the Landlord makes them take him to court to get the money then they are seeking return of double the amount.

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain a Monetary Order for the return of their 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 1, 2009. Mail receipt numbers were provided in the Tenant's documentary evidence. The Landlord is deemed to be served the hearing documents on October 6, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both Tenants and the Agent for the Landlord appeared, acknowledged receipt of evidence submitted by the other, 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

Has the Tenant proven entitlement to an Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed facts are the fixed term tenancy began on March 1, 2009 and ended on August 31, 2009. Rent was payable on the first of each month in the amount of \$2,500.00. The Tenants paid a security deposit of \$1,250.00 on February 24, 2009.

The Tenants provided testimony that the Landlord did not complete a move-in inspection form nor did the Landlord complete a move-out inspection form.

The male Tenant argued that on August 31, 2009 the Landlord attended the rental unit with two young males who did a quick walk through of the rental unit. The male Tenant stated that he requested the Landlord to mail them their security deposit addressed to the rental unit as they did not have a forwarding address as of yet and had arranged to have their mail forwarded through Canada Post to a temporary address.

The female Tenant testified that they had arranged temporary accommodation until October 1, 2009 which is when they could take possession of the home they had purchased. The female Tenant argued that their mail had been forwarded through Canada Post for the entire period of August 31, 2009 to October 1, 2009.

The Tenants testified that when they did not receive their security deposit within a couple of days they called the Landlord and after speaking with the Landlord over the phone they sent him an e-mail. The Tenants argued that shortly after their e-mail they

received the letter dated September 15, 2009 from the Landlord listing deductions the Landlord was making to their security deposit.

The Agent for the Landlord testified and confirmed that the Landlord has not made an application for dispute resolution, that the Landlord has not previously been issued an Order from the Residential Tenancy Branch ordering the Landlord to keep the security deposit, and the Landlord does not have the Tenants' permission, in writing, to keep the 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.

The evidence before me supports that the Landlord has not been issued an Order from the Residential Tenancy Branch ordering the Landlord to retain the security deposit, the Landlord has not applied for dispute resolution to keep the security deposit, and the Landlord does not have written permission from the Tenants to keep the security deposit.

In this case the Tenants did not have a forwarding address to provide to the Landlord, at the end of the tenancy and requested that the Landlord mail the payment to rental unit to be forwarded through Canada Post. The Tenants did not have a forwarding address until October 1, 2009 and I note that they filed their application for dispute resolution on September 29, 2009 listing their new forwarding address on this application.

As per the above, I find that the Tenants have proven that they provided the Landlord with written notification of their forwarding address in their application for dispute

resolution which was sent to the Landlord via registered mail on October 1, 2009. The Landlord is deemed to have received the Tenants' forwarding address, in writing, on October 6, 2009, five days after it was mailed, in accordance with section 90 of the Act.

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 Tenants' security deposit or file for dispute resolution no later than October 21, 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 their claim for the return of their security deposit and interest.

At the onset of the hearing the Tenants stated that they would only be seeking return of double the security deposit if the Landlord took them to court to make them collect on the order. As the Landlord did not attend the hearing there was no opportunity for the parties to come to a settlement agreement. Therefore I must issue the monetary order in accordance with Section 38(6) of the Act for return of double the security deposit. The Tenants are at liberty to negotiate a settlement with the Landlord for a lower amount if they so desire.

I find that the Tenant has succeeded with his application and I hereby award him recovery of the filing fee.

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

Doubled Security Deposit 2 x \$1,250.00	\$2,500.00
Interest owed on the Security Deposit of \$1,250.00 from February 24, 2009 to January 28, 2010 of \$0.00	0.00
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$2,550.00

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 **\$2,550.00**. 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 28, 2010.

Dispute Resolution Officer