

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the tenant for the return of double her security deposit, in addition to recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony. Despite mailing of the application for dispute resolution and notice of hearing to each of the landlord(s) / respondent(s) by way of registered mail, neither appeared at the hearing. Pursuant to sections 89 and 90 of the Act, the landlord(s) / respondent(s) are deemed to have been served.

Issues to be decided

- Whether the tenant is entitled to either or both of the above under the Act

Background and Evidence

There is no written residential tenancy agreement in place for this month-to-month tenancy which began on or about March 29, 2009. Rent in the amount of \$1,100.00 was payable in advance on the first day of each month. A security deposit of \$550.00 was collected on or about March 29, 2009. There was no move-in condition inspection or report completed by the parties at the outset of tenancy.

After giving notice of her intent to end the tenancy, the tenant vacated the unit on or about June 30, 2009. There was no move-out condition inspection or report completed by the parties.

On June 30, 2009, by way of her business card the tenant left her forwarding address at the unit along with the unit keys. Subsequently, the tenant informed the landlord(s) of her forwarding address by letter dated July 15, 2009, specifically in relation to the return of her security deposit. Thereafter, on or about August 11, 2009 the tenant received a cheque from the landlord(s) in the amount of \$397.88. This amount reflects the balance

remaining following the landlord(s)' unauthorized withholding of \$152.12 for carpet cleaning, in addition to a charge for the per diem occupancy of the unit for the period between March 29 and 31, 2009. The tenant was unable to negotiate this cheque at the bank.

Analysis

Based on the undisputed testimony of the tenant, and the e-mail exchanges between the tenant and the landlord(s) / respondent(s), which were included in the tenant's documentary evidence, I find that "CG" and "NS" are both "landlords" pursuant to the definition of same which is set out in the Act.

Section 23 of the Act speaks to **Condition inspection: start of tenancy or new pet**, and provides in part as follows:

23(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Section 24 of the Act addresses **Consequences for tenant and landlord if report requirements not met**, and provides in part as follows:

24(2) The right of a 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 23(3) [*2 opportunities for inspection*],
- (b) having complied with section 23(3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulation.

Further, sections 35 and 36 of the Act speak, respectively, to **Condition inspection: end of tenancy**, and **Consequences for tenant and landlord if report requirements not met**.

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.

Additionally, 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 tenant, I find that the landlord(s) have failed to comply with any of the above statutory provisions.

Accordingly, I find that the tenant is entitled to return of double her security deposit in the amount of \$1,100.00 (2 x \$550.00), in addition to the \$50.00 filing fee. I hereby, therefore, grant the tenant a monetary order under section 67 of the Act for \$1,150.00.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of **\$1,150.00**. Should it be necessary, this order may be served on the landlord(s), filed in the Small Claims Court and enforced as an order of that Court.

DATE: February 11, 2010

Dispute Resolution Officer