

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 double her security deposit and to recover the cost of the filing fee from the Landlords 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 November 5, 2009. The Landlords confirmed receipt of the hearing packages.

Both the Landlords and the Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

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 June 21, 2009 and ended on September 30, 2009 in accordance with the tenancy agreement. Rent was payable on the first of each month in the amount of \$750.00 and a security deposit of \$375.00 was paid on June 17, 2009.

The Landlords confirmed the Tenant's testimony that a walk through inspection was conducted at the onset of the tenancy and at the end of the tenancy, was completed verbally, and no written reports were issued or given to the Tenant.

The Tenant provided the Landlords with her forwarding address in writing on September 30, 2009. The Tenant argued that she received three separate money orders from the Landlords as repayment of a portion of her security deposit. The Tenant confirmed she received \$196.26 on October 27, 2009, \$75.00 and \$40.00 on November 2, 2009.

The Landlords confirmed that three money orders were purchased and mailed on October 21, 2009 and October 29, 2009. The male Landlord argued that the Tenant had an indoor/outdoor pet and she did not have the carpets cleaned at the end of the tenancy. The male Landlord stated that they rented a machine and cleaned the carpets themselves and held back a portion of the security deposit to pay for it. The male Landlord argued that he told the Tenant he would be holding back money from the security deposit after the move-out walk through.

The female Landlord stated that they also had to pay a hydro bill that was the Tenant's responsibility.

Both Landlords confirmed that they did not apply for dispute resolution to obtain an Order allowing them to retain a portion of the security deposit; they do not possess an Order authorizing the Landlords to retain money from the security deposit, and the Landlords do not have the Tenant's permission, in writing, to keep a portion of the security deposit.

Analysis

All of the testimony and documentary evidence was carefully considered.

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.

In this case the Landlords issued the Tenant three separate money orders totalling \$311.26, all of which were received by the Tenant prior to the date the Tenant sent her application for dispute resolution to the Landlords via registered mail on November 5, 2009. A balance of \$63.74 was retained by the Landlords.

The Landlords have admitted that they did not apply for dispute resolution to keep the security deposit, do not have an Order allowing them to keep the \$63.74, and they do not have the Tenant's written consent to retain \$63.74 of the security deposit.

The evidence supports that the Tenant provided the Landlords with her forwarding address on September 30, 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 Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than October 15, 2009.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are 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 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 the balance owed of her security deposit plus interest.

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

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

Doubled Balance owed on Security Deposit 2 x \$63.74	\$127.48
Interest owed on the Security Deposit of \$375.00 from June 17, 2009 to March 9, 2010	0.00
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$177.48

I do not accept the Landlords' argument that the Landlords' violation was somehow excused due to the Tenant's alleged failure to comply with the Act or agreement. 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.

In regards to the Landlords claims relating to loss that they may have suffered, I am not able to hear nor consider the Landlords' claim during these proceedings as this hearing was convened solely to deal with the Tenant's application. That being said, I must point out that the Landlords are at liberty to make a separate application for dispute resolution and to resubmit their evidence.

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 **\$177.48**. The order must be served on the respondent Landlords 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: March 09, 2010.

Dispute Resolution Officer