

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement and for the return of double the security deposit and a Monetary Order to recover the filing fee.

The tenant served the landlords by registered mail on November 13, 2009 with a copy of the Application and Notice of Hearing. I find that the landlords were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to recover double his security deposit?
- Is the tenant entitled to a monetary Order for money owed or compensation for damage or loss?

Background and Evidence

This tenancy was renewed on May 01, 2009 when the tenant entered into a new tenancy agreement with the landlords. Rent for this property was \$4,300.00 per month and was due on the first of each month. The tenant paid a security deposit of \$2,150.00 on April 01, 2008. The tenant testifies that he moved from the property at the end of the fixed term on September 01, 2009. He states that he gave the landlord's agent his forwarding address in writing on this day. The tenant claims the landlord did not return his security deposit and he sent an e-mail with his forwarding address again on October 07, 2009.

The tenant testifies that during his tenancy he experienced a problem with toilet. This meant the toilet could not be used until repairs were carried out. The tenant states he contacted one of the landlords (DS) who gave permission to him to get it repaired. The tenant contacted a plumber who made the repairs in July 13, 2009. The tenant paid for this repair and sent the invoices to the same landlord for reimbursement. He received no response from the landlords and sent the invoices several times. The tenant claims the cost of this repair to the amount of \$211.57 (receipts provided).

The landlords claim they did not return the tenants security deposit as they discovered damage to the rental property. The landlord's witness who is the agent for the property testifies that he informed the tenant of damages and required cleaning by e-mail and received e-mails from the tenant in response in which the tenant has Ok'd some aspects mentioned concerning the cleaning.

The landlords dispute the tenants' testimony concerning the toilet seal. One of the landlord's states that he had a conversation with the tenant about the toilet and told him he was coming to the property in September would look at it then and take care of it.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding

address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.

I find that the landlord did receive the tenants forwarding address in writing and the evidence present shows this was received on October 07, 2009. As a result, the landlord had until October 22, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the e-mail from the tenant in response to the landlords agents e-mail does not constitute an agreement for the landlord to keep all or part of the security deposit. Therefore, I find the landlord did not return the tenants security deposit and consequently, pursuant to section 38(6)(b) of the *Act*, the landlord must pay the tenant double the amount of the security deposit and accrued interest on the original amount.

With regards to the tenants claim for the cost of the repair to the toilet; I find that pursuant to section 33 of the *Act*, this repair would constitute an emergency repair. I find the tenant did notify the landlord of the need to have this repair made and he gave the landlord an account and invoice for the repair. Consequently I find the tenant is entitled to be reimbursed for this repair to an amount of \$211.57.

As the tenant has been successful in this matter I find he is also entitled to recover his filing fee from the landlords of \$50.00. The tenant is entitled to a Monetary Order as follows:

Double the security deposit	\$4,300.00
Repair cost for toilet	\$211.57
Filing fee	\$50.00
Total amount due to the tenant	\$4,585.80

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$4,585.80**. The order must be served on the respondents 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 12, 2010.

Dispute Resolution Officer