

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlords.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on May 1, 2009 as a month to month tenancy for a monthly rent of \$1,500.00 due on the 1st of the month with a security deposit of \$750.00 paid prior to May 1, 2009. The tenancy ended on September 30, 2009.

The tenant submitted the following documents into evidence:

- A copy of a letter dated October 15, 2009 from the landlord to the tenant refusing to return the security deposit and providing an explanation as to why;
- A copy of a rental property move out inspection checklist; and
- A copy of a handwritten letter dated October 14, 2009 from the tenant to the landlord providing her forwarding address and requesting return of the security deposit.

The landlord submitted into evidence the following documents:

- A summary of events and description of the landlord's claim against the security deposit;
- A copy of pages 1-1 to 1-7 of the Residential Tenancy Policy Guideline;
- A note from the previous tenant of the dispute address stating no damage when he moved out and that he received his full security deposit back at the end of the tenancy;
- A copy of a negotiated cheque written to the previous tenant by the landlord for return of the security deposit;
- A copy of a letter dated October 15, 2009 from the landlord to the tenant refusing to return the security deposit and providing an explanation as to why; and

- 11 photographs of the residential property at the end of the tenancy.

The tenant testified that she provided the landlord with her forwarding address on October 14, 2009 as per the documentary evidence. The landlords confirmed that they did not file an Application for Dispute Resolution within 15 days of receipt of the tenant's forwarding address, but they had provided the tenant with an explanation as to why they were keeping it, as per the documents submitted.

Both parties agree that a move in Condition Inspection Report and a move out Condition Inspection Report were not completed at the start or end of the tenancy.

Analysis

Section 38(1) of the *Act* states the landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address the landlord must either return the security deposit less any mutually agreed upon deductions or file an Application for Dispute Resolution.

Section 38 subsection 6 states that should the landlord fail to comply with subsection 1 the landlord must pay double the security deposit. As such, I find the landlord must return double the amount of the security deposit.

The landlord had submitted justification to claim damages against the security deposit, which was not germane to this hearing but the landlord remains at liberty to file their own claim against the tenant for damages to the rental unit.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$1,550.00** comprised of \$1,500.00 double the amount of the security deposit held and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced 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 15, 2010.

Dispute Resolution Officer