

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of double the security deposit. Both parties appeared at the hearing and were provided the opportunity to be heard. Both parties confirmed service of documents upon them.

Issues(s) to be Decided

Has the tenant established an entitlement to double the security deposit?

Background and Evidence

I was provided undisputed evidence as follows. The tenancy commenced December 6, 2008. The tenant paid a \$450.00 security deposit on December 3, 2008. The tenant vacated the rental unit and provided the landlord with a forwarding address in writing on October 27, 2009. The landlord did not prepare move-in or move-out inspection reports. The tenant did not authorize the landlord to make any deductions from the security deposit in writing and did not receive a refund of the security deposit. At the time of this hearing, the landlord has not made an application for dispute resolution for damages to the rental unit.

In making this application the tenant is seeking return of double the security deposit. In response to being served with the tenant's application, the landlord submitted photographs of the rental unit and an invoice for replacement countertops. The landlord was of the position that the tenant damaged the rental unit and that the landlord would retain the security deposit in satisfaction of the damage.

The tenant did not authorize any deductions for damages to the rental unit during the hearing. As evidence for the hearing, the tenant provided a copy of the tenancy

agreement, photographs of the rental unit and a letter to the landlord providing a forwarding address.

Analysis

As the parties were informed during the hearing, the landlord's claims for damages were not issues for me to decide for this proceeding as the landlord had not made an application for dispute resolution. The purpose of this hearing was to hear the tenant's application for dispute resolution and determine whether the landlord complied with the Act with respect to the security deposit. The landlord is at liberty to make a separate application for damages.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damages if the landlord has met the inspection report requirements. In this case, the landlord did not meet the inspection report requirements and the landlord could not have legally obtained the tenant's consent to made deductions for damages. Accordingly, the landlord was required to comply with section 38(1) of the Act by either returning the security deposit and interest to the tenant or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

I find that the tenancy ended and the tenant provided his forwarding address to the landlord in writing but the landlord did not repay or make an application for dispute resolution within 15 days. Therefore, the landlord did not have the legal right to retain

the security deposit and the landlord must now pay the tenant double the security deposit, plus interest on the amount of the original deposit.

As the tenant was successful in this application, the tenant is awarded the filing fee paid for making this application. I calculate that the landlord is obligated to pay the tenant the following amount:

Double security deposit (\$450.00 x 2)	\$ 900.00
Interest on deposit	0.53
Filing fee	<u>50.00</u>
Monetary Order for tenant	<u>\$ 950.53</u>

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant was successful in this application and has been provided a Monetary Order in the amount of \$950.53 to serve upon the landlord.

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 18, 2010.

Dispute Resolution Officer