

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

The tenant served the landlord by registered mail on January 29, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was 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 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 the security deposit?

Is the tenant entitled to double the security deposit?

Background and Evidence

This month to month tenancy was due to start on September 15, 2009. The rent for this unit was agreed at \$530.00 per month. The tenant paid a security deposit of \$250.00 on September 13, 2009.

The tenant testifies that he agreed to rent the unit from the landlord and paid a security deposit to him. Before the tenant was due to move in he changed his mind and attempted to contact the landlord who had gone for a trip overseas. The tenant claims he made many attempts to contact the landlord but he did not return his e-mails or telephone calls. The tenant testifies that he tried

to find another student to rent the unit but failed to do so. The tenant seeks the return of double his security deposit to the sum of \$500.00. The tenant has provided no evidence that he gave the landlord his forwarding address in writing.

The landlord testifies that the tenant entered into a tenancy agreement with him to rent the unit on September 13, 2009 and signed the agreement on that day and paid a security deposit of \$250.00. The landlord claims the tenant did not notify him that he was not going to rent the unit. The landlord testifies that he attempted to re-rent the unit by advertising in the newspaper and on the internet. However, he claims as this is student housing all the students had already found a place to live and the unit remains empty. The landlord states because the tenant did not continue with his tenancy the landlord will lose the years rent for the unit. The landlord has requested to keep the security deposit at today's hearing.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; 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 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 to the tenant.

The tenant has provided no evidence that he has given the landlord his forwarding address in writing. The address provided on the application cannot be deemed to be a forwarding address unless the tenant specifies it to be his forwarding address and not just his address for service. Therefore, I find the tenant is not entitled to recover double the amount of the security deposit from the landlord. However, as the tenant confirmed at today's hearing that the address given on his application is his forwarding address I find he is entitled to the return of his security deposit to an amount of **\$250.00**.

There is no evidence to suggest that the landlord has made an application to recover unpaid rent or to keep the tenants security deposit. As such the landlord is not entitled to make a claim

to keep the security deposit at this hearing as this hearing is held to deal with the applicants claims only. Consequently, the landlord is at liberty to make an application himself.

As the tenant has been partially successful with his application I find he is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the Act.

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for \$300.00 comprised of \$250.00 security deposit and \$50.00 filing fee paid for this application. The order must be served on the respondent 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: April 14, 2010.

Dispute Resolution Officer