

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for the return of double the security deposit and to recover the filing fee.

The tenants served the landlord by registered mail on January 21, 2010 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 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 the security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on October 01, 2008 and ended on October 31, 2009. Rent for this unit was \$650.00 per month and was due on the first of each month. The tenants paid a security deposit of \$325.00 on October 01, 2008.

The tenant's testify that they moved from the rental unit October 31, 2009. The tenants testify that the landlord did not carry out a move in or move out condition inspection of the rental unit. The tenants testify that they gave the landlord's their forwarding address in writing on November 22, 2009 and requested the landlord to return their security deposit by certified cheque. The landlord did not respond to the tenant's letter. The tenant's testify that the landlords did not

return their security deposit to them within 15 days of receiving their forwarding address. The tenants have provided a copy of this letter and the registered mail receipt.

The landlord testifies that the security deposit was withheld as the tenant owed him some rent.

Analysis

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)(b) 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.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on November 27, 2009, the five day after it was mailed pursuant to section 90 (a) of the *Act*. As a result, the landlord had until December 11, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit or file an application to keep it. Therefore, I find that the tenant has established a claim for the return of double the security deposit of **\$650.00** plus accrued interest of **\$1.23** on the original amount pursuant to section 38(6)(b) of the *Act*.

I also find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. I find the tenant is entitled to a Monetary Order as follows pursuant to section 67 of the *Act*:

Double the security deposit	\$650.00
Filing fee	\$50.00
Total amount due to the tenants	\$701.23

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 **\$701.23**. 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 16, 2010.

Dispute Resolution Officer