

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for return of double her security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail to each Landlord on December 9, 2009. Mail receipt numbers were provided in the Tenant's evidence. The Landlords are deemed to be served the hearing documents on December 14, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both Landlords and the Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order for return of double her security deposit and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, under sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the tenancy began on March 1, 2009 and ended when the Tenant vacated the rental unit on November 15, 2009. Rent was payable on the first of each month in the amount of \$1,400.00 and the Tenant paid a security deposit of \$700.00 on approximately April 20, 2009. The Tenant paid \$1,400.00 for November 1, 2009 rent.

The Tenant testified that she was issued a 2 Month Notice to End Tenancy because the Landlord or a close family member was going to be occupying the rental unit. The 2 Month Notice was posted the Tenant's door on approximately September 21, 2009 and listed an effective date of November 30, 2009.

The Tenant referred to her documentary evidence of a copy of a letter she wrote to the Landlord on November 5, 2009 advising the Landlord that she would be vacating the

rental unit on November 15, 2009, requested the return of 15 days of November rent of \$700.00, the return of the security deposit, and provided the Landlord with the Tenant's forwarding address. The Tenant argued that she had a telephone conversation with the Landlord on November 5, 2009 at which time she informed the Landlord she would be dropping off the above mentioned letter and that the Landlord told the Tenant she didn't need to provide the letter. The Tenant argued that she tried to meet up with the Landlord at the Landlord's office to leave her the letter and after a couple of failed attempts to see the Landlord, the Tenant left the letter with the Landlord's secretary on November 8, 2009.

The Tenant is seeking the return of one half of the November 2009 rent of \$700.00 plus double the return of her security deposit of \$1,400.00. (2 x \$700.00)

The Landlord confirmed that she submitted her photo evidence late and that she did not mail the photos to the Tenant until Friday May 23, 2010, just three days prior to today's hearing. The Tenant confirmed that she has not received the Landlord's evidence.

The Landlord confirmed that she received the Tenant's November 5, 2009 letter on November 8, 2009. The Landlord argued that she told the Tenant she could have the half of November 2009 rent returned at the end of November 2009 and stated that she needed the two weeks to gather the money. The Landlord claimed the \$700.00 rent has been available to the Tenant since the end of November 2009 but that the Tenant failed to contact the Landlord to collect the money. The Landlord does not dispute owing the Tenant the half months rent.

The Landlord argued that the Tenant damaged the rental unit so the Landlord kept the security deposit. The Landlord referred to her photos as evidence of the damage. The Landlord confirmed that she does not have an Order from the Residential Tenancy Branch granting her authority to keep the security deposit, the Landlord has not applied for dispute resolution to keep the security deposit, and the Landlord does not have the Tenant's written permission to keep the security deposit.

Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is

important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

The evidence supports the tenancy ended after the Landlord issued the Tenant a 2 Month Notice to End Tenancy effective November 30, 2009 and the Tenant provided the Landlord ten days notice to end the tenancy on November 15, 2009. In accordance with section 50 of the *Act*, the Tenant is entitled to the return of \$700.00 of the full month's rent paid for November 2009. In the presence of the confirmed testimony, I find the Tenant has proven the test for loss, as listed above and I approve her claim of \$700.00 for the return of one half of November 2009 rent.

The Landlords have admitted that they did not apply for dispute resolution to keep the security deposit, they do not have an Order allowing them to keep the security deposit, and the Landlords do not have the Tenant's written consent to keep the security deposit.

The evidence supports that the Tenant provided the Landlords with her forwarding address in the November 5, 2009, letter which was delivered to the Landlord's office on November 8, 2009.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than November 23, 2009.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security deposit plus interest.

I find that the Tenant has succeeded with her application therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Return one half of November 2009 rent (1/2 of \$1400.00)	\$700.00
Security Deposit Doubled 2 x \$700.00	1,400.00
Interest owed on the Security Deposit of \$700.00 from April 20, 2009 to April 27, 2010	0.00
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$2,150.00

I do not accept the Landlords' argument that the Landlords' violation was somehow excused due to the Tenant's alleged failure to comply with the Act or agreement by causing alleged damage to the rental unit. Even if the Tenant was found to be in violation of the Act, there is no provision in the Act that extends immunity for a reciprocal breach on the part of a Landlord.

In regards to the Landlords' claims relating to loss that they may have suffered, I am not able to neither hear nor consider the Landlords' claim during these proceedings as this hearing was convened solely to deal with the Tenant's application. That being said, I must point out that the Landlords are at liberty to make a separate application for dispute resolution and to resubmit their evidence.

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$2,150.00**. The order must be served on the respondent Landlords 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 27, 2010.

Dispute Resolution Officer