

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 by teleconference and was attended by the tenant's agent and the landlord.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount 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 December 17, 2005 as a month to month tenancy for a monthly rent of \$960.00, at the end of the tenancy, due on the 1st of the month. A security deposit of \$450.00 was paid on December 17, 2005. The tenancy ended on October 31, 2009.

The tenant submitted into evidence the following documents:

- A copy of a letter dated November 23, 2009 from the tenant to the landlord requesting return of his security deposit and providing a forwarding address;
- A copy of a note dated November 26, 2009 from the landlord to the tenant outlining the amount the landlord was retaining from the security deposit and the final balance;
- A copy of a cheque dated November 26, 2009 from the landlord to the tenant in the amount of \$155.00 citing damage deposit refund;
- A copy of a letter dated December 9, 2009 from the tenant to the landlord requesting return of the full amount of the security deposit plus interest be returned;
- A copy of a print out from the "Deposit Interest Calculator" showing the amount of interest due on the security deposit to be \$15.92; and
- A copy of a cheque dated December 10, 2009 from the landlord to the tenant in the amount of \$15.92 citing damage deposit interest.

The landlord has submitted 4 photographs showing the condition of a damaged entry door in the rental unit.

The parties did not dispute the basic facts of this case. The landlord noted that he had completed a walk through inspection with the tenant's mother at the end of the tenancy and that he did not notice the problems with the door during the inspection.

Analysis

Section 38(1) of the Act stipulates that a landlord must return a security deposit less any mutually agreed upon amounts to a tenant within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) goes on to say that should the landlord fail to comply with subsection 1 the landlord must pay the tenant double the amount of the security deposit to the tenant. In this case the landlord did return \$155.00 plus \$15.92 in interest to the tenant but failed to obtain written consent from the tenant and failed to file an Application for Dispute Resolution.

As a result, I find the tenant is entitled to the return of double the amount of the outstanding balance of the security deposit of \$295.00, in the amount of \$590.00.

I make no finding in relation to the landlord's claim of damage to the entry door and note the landlord is at liberty file an Application for Dispute Resolution against the tenant for any damage to the rental unit.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I therefore grant a monetary order in the amount of **\$640.00** comprised of \$590.00 as double the amount of outstanding security deposit 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: June 01, 2010.

Dispute Resolution Officer