

DECISION

Dispute Codes MNSD, FF, SS

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain a Monetary Order for the return of her security deposit and to recover the cost of the filing fee. At the outset of the hearing the tenant withdrew her application for a Substitute Service Order.

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 on February 25, 2010. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on March 02, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

- Is the tenant entitled to recover her security deposit from the landlord

Background and Evidence

This month to month tenancy started on April 01, 2008 and ended on or about March 8, 2009. The tenant paid a monthly rent of \$750.00 which was due on the first of each month. The tenant paid a security deposit of \$375.00 on March 28, 2008.

The tenant testifies that she moved from the rental unit after receiving a 10 Day Notice to End Tenancy from the landlord. The tenant testifies that she gave the landlord a letter requesting the return of her security deposit and her forwarding address on or about April 08, 2009. The tenant has provided a letter from the landlord in her evidence that states that the management did

receive this letter from the tenant but states that the landlord would not return the tenants security deposit as there were unresolved issues at the rental unit.

The tenant seeks the return of her security deposit as the landlord has not returned this within 15 days of receiving her forwarding address in writing or making an application to keep the security deposit.

Analysis

The landlord did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord I find the tenant is entitled to recover her security deposit. I refer both parties to Section 38(1) of the *Act*. This 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)(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.

I find that the landlord did receive the tenants forwarding address in writing by March 08, 2009. As a result, the landlord had until March 23, 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 tenants security deposit and there is no evidence that the landlord has made an application to keep it. Consequently, pursuant to section 38(6)(b) of the *Act*, the landlord must return the tenants security deposit. The tenant has only applied for her security deposit and has not applied for double the amount. Consequently I find the tenant is entitled to recover her security deposit plus accrued interest.

As the tenant has been successful with her claim I find she is also entitled to recover her \$50.00 filing fee paid for this application pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order as follows:

Security deposit	\$375.00
Filing fee	\$50.00
Total amount owed to the tenant	\$429.29

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 **\$429.29**. 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: June 08, 2010.

Dispute Resolution Officer