

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double his security deposit 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 on January 8, 2010. Canada Post receipts were provided in the Tenant's evidence. The Landlord is deemed to have been served the hearing documents on January 13, 2010, five days after they were mailed in accordance with section 90 of the *Act*.

The Tenant appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the Landlord despite the Landlord being served notice of today's hearing in accordance with the *Act*.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified he entered into a one year fixed term tenancy with the Landlord effective January 1, 2009. Rent was payable on the first of each month in the amount of \$700.00 and the Tenant paid a security deposit of \$350.00 on January 1, 2009.

The Tenant stated that in approximately February 2009, he allowed his girlfriend to move into the rental unit with him and that the Landlord did not object to her presence. The Tenant stated that near the end of September 2009 his girlfriend placed a restraining order against the Tenant which prevented him from attending the rental unit, so his tenancy ended. The Tenant argued that he had paid his rent in full up to the end of September and referred to his evidence which included among other things, a copy of receipts issued to the Tenant from the Landlord and a copy of the tenancy agreement.

The Tenant argued the Landlord told him that a new tenancy agreement was entered into between the Landlord and the Tenant's ex-girlfriend and that the Landlord transferred the security deposit to the new tenancy without the Tenant's permission.

The Tenant also provided in evidence a copy of the letter he sent to the Landlord on December 15, 2009, via registered mail, and the registered mail receipts. It was in this December 15, 2009 letter that the Tenant formally requested the return of his security deposit and provided the Landlord with his forwarding address in writing.

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 that the Tenant paid a security deposit of \$350.00 on January 1, 2009, and when his tenancy ended he provided the Landlord with his forwarding address, in writing, via registered mail on December 15, 2009. The Landlord is deemed to have received the forwarding address December 20, 2009, five days after it was mailed, in accordance with section 90 of the *Act*.

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 Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than January 4, 2010.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is 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 his claim for the return of double the security deposit plus interest.

I find that the Tenant has succeeded with his 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:

Double the Security Deposit 2 x \$350.00	\$700.00
Interest owed on the Security Deposit of \$375.00 from January 1, 2009 to June 11, 2010	0.00
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$750.00

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 **\$750.00**. The order must be served on the respondent Landlord 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 11, 2010.

Dispute Resolution Officer