

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order to recover the remainder of her security deposit and to recover the filing fee.

The tenant served the landlord by registered mail on February 19, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was 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 withheld portion of her security deposit?

Background and Evidence

Both parties agree that this tenancy started as a fixed term tenancy on March 01, 2005 and reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$1,050.00 per month and was due on the first of each month. The tenant paid a security deposit of \$475.00 on March 01, 2005. No move in or move out condition inspection reports were completed at the beginning and end of the tenancy. The tenant

vacated the rental unit on January 15, 2010 and the tenancy ended on January 31, 2010. The tenant gave the landlord her forwarding address in writing on February 01, 2010.

The tenant testifies that the landlord sent her a cheque for \$450.00 on February 09, 2010. The tenant states that the landlord withheld \$25.00 from her security deposit and claimed she had not thoroughly cleaned the rental unit. The tenant claimed she did clean the rental unit at the end of the tenancy and has provided photographic evidence showing the condition of the rental unit. The tenant claims she did not give permission for the landlord to withhold any of her security deposit and seeks to recover double of the unreturned amount to the sum of \$83.62 including double the accrued interest.

The landlord claims the tenant did not carry out a thorough clean of the rental unit and he employed a cleaner to clean the unit after the tenancy ended. The landlord states this is his first rental and he was not aware that he had to complete condition inspections or apply to keep the security deposit.

The landlord provided photographic evidence of the additional cleaning required but did not call his witness into the hearing.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 23(4) and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

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 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 on February 01, 2010. As a result, the landlord had until February 16, 2010 to return the security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord returned \$450.00 the tenants' security deposit on February 09, 2010 within the allowable 15 days. However, the landlord retained \$25.00 plus the accrued interest on the original amount. The tenant calculated the sum she is owed to be \$133.62 however I find she calculated the accrued interest to be doubled when in fact the Act only allows the original amount of the security deposit to be doubled. Consequently, pursuant to section 38(6)(b) of the *Act*, the landlord must pay the tenant double the outstanding balance of the security deposit to the sum of **\$50.00** plus the accrued interest of **\$16.81** on the original amount.

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

Double the balance of security deposit	\$50.00
Filing fee	\$50.00
Total amount owed to the tenant	\$116.81

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$116.81**. 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 16, 2010.

Dispute Resolution Officer