

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on January 14, 2010. Canada Post tracking numbers were provided in the Tenant's testimony. The Tenant testified that he had proof the documents were signed for on January 18, 2010.

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

Issues(s) to be Decided

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

Background and Evidence

Then Tenant testified that the fixed term tenancy began on February 1, 2009 and was set to switch to a month to month tenancy after January 31, 2010. Rent was payable on the first of each month in the amount of \$1,050.00 and the Tenants paid a security deposit of \$525.00 plus a pet deposit of \$200.00 on January 15, 2009.

In support of his testimony, the Tenant referred to his documentary evidence which included, amongst other things, copies of the tenancy agreement, copies of e-mails between the Tenants and the Landlord, copies of telephone transcripts, and copies of e-mails between parties. The Tenant argued that on October 8, 2009, they came to an agreement with the Landlord whereby the Tenants could assign their lease or end their lease if a new tenant could be found, that the Landlord approved of this arrangement,

and that the Landlord preferred to have the replacement tenant(s) enter into a one year lease.

The Tenant testified the Landlord advised him during a telephone conversation on November 13, 2009 at 7:11 p.m. that a suitable tenant was found and would begin their tenancy as of December 1, 2009. The Tenant was also informed that the Landlord would not be available to attend the unit to do the change over and the Landlord requested the Tenants provide the keys to the new tenant during their move-out.

The Tenant confirmed that the Landlord did not perform a move-in inspection report nor did he complete a move-out inspection report with their tenancy or with the new tenants as supported by the e-mail evidence he provided. The Tenant argued the Landlord has become impossible to contact since the end of their tenancy and that they sent their forwarding address to the Landlord via registered mail on December 15, 2009, as supported by their evidence.

Analysis

All of the testimony and documentary evidence was carefully considered.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by his evidence.

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.

In this case the evidence supports the tenancy ended November 30, 2009, by mutual agreement and the Landlord was provided the Tenants' forwarding address by registered mail on December 15, 2009. The evidence supports the Landlord signed for the forwarding address letter on December 18, 2009 at 17:22 hours.

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 Tenants' security and pet deposits or file for dispute

resolution no later than January 3, 2010. There is no evidence to support that the Landlord did either.

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 and pet deposits. I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double their security and pet deposits plus interest.

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

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Doubled owed on Security Deposit 2 x \$525.00	\$1,050.00
Doubled owed on Pet Deposit 2 x \$200.00	400.000
Interest owed on the Security Deposit of \$525.00 plus the Pet Deposit of \$200.00 from January 15, 2009 to June 24, 2010	0.00
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$1,500.00

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 **\$1,500.00**. 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 24, 2010.

Dispute Resolution Officer