

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit amount claimed as per Section 38 of the Act?

Background and Evidence

The undisputed testimony before me is as follows.

On November 04, 2009 the tenant entered into a verbal tenancy agreement for occupation of the rental unit on December 01, 2009. The landlord collected a security deposit of \$400. When they arrived on December 01, 2009 at approximately 1:30 p.m., ready to move in along with moving help, the rental unit was undergoing rewiring of the unit's electrical system and other renovations. The tenant was told she was moving in earlier than agreed, and the rental unit may not be ready for up to 2 days. The landlord told the tenant that they were not to move in until 12:00 p.m. on the December 01, which the landlord said he determined, was after midnight that day, rather than what the tenant determined was 12:00 noon. The tenant did not consider it safe to move in as some cut electrical wires were 'sparking', and the unit was unfinished. She was

advised she would not be receiving her security deposit back. The tenant left with their belongings and managed to find temporary lodging. On December 02, 2010 the tenant mailed the landlord a registered letter requesting the return of her deposit and included her forwarding / mailing address. The tenant tracked the mail on-line and testified the landlord had received it on December 03, 2009 at 1:30 p.m. The landlord retains the security deposit of \$400.

Analysis

On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

Section 38(1) of the Act provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord is deemed to have received the registered mail with the tenant's forwarding address, on December 08, 2009. The landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

- 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
- 38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$400 and was obligated under section 38 of the Act to return this amount. The amount which is doubled is the \$400 original deposit. As a result I find the tenant has established an entitlement claim for **\$800** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$850**.

Conclusion

I grant the tenant an order under section 67 for the sum of **\$850**. If necessary, this order may be filed in the Small Claims Court 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*.