

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 and recovery of their filing fee.

The landlord did not participate in the conference call hearing. I accept the tenant's evidence that they attempted to serve the landlord personally but were refused. The tenant then served with the application for dispute resolution and notice of hearing by registered mail On January 14, 2010 in accordance with Section 89 of the Residential Tenancy Act (the Act), but the landlord did not retrieve the registered mail and it was returned to the tenant. The tenant included the returned mail in their evidence along with the tracking number for the registered mail. Under section 90 of the Residential Tenancy Act (the Act) the landlord is deemed served 5 days after the Notice is mailed. I note that failure or neglect to accept or pick up registered mail does is not a ground for Review under the Act. I find that the landlord has been served in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit amount claimed?

Background and Evidence

The undisputed facts before me are as follows.

The tenancy began in January 2009, ended November 30, 2009, and was returned clean December 02, 2009 – “as per agreement”. The landlord collected a security deposit of \$750 at the outset of the tenancy. There was a move in inspection conducted at the outset. There was no move out inspection conducted at the end of the tenancy. The tenant's testimony is that he verbally requested the security deposit on

January 10, 2010 - notifying the landlord by phone of their forwarding address. On January 13, 2010 the tenant received a cheque for part of the security deposit in the amount of \$229.83. The parties were not in agreement in respect to deductions from the security deposit

On January 14 the tenant mailed the landlord the Notice of Dispute Resolution by registered mail, which included the tenant's forwarding address inside, and on the outside of the registered mail.

Analysis

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 according to **Section 90** of the Act, on January 20, 2010, the landlord was deemed served, by mail, of the tenant's forwarding address in writing. **I find** that 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 the balance of the security deposit in the amount of \$520.17 and was obligated under section 38 to return this amount along with the returned amount of \$229.83. The amount which is doubled is the \$750 *original amount of the deposit* before any applicable interest (\$0). As a result I find the tenant has established an entitlement claim for **\$1270.17** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$1320.17**.

Conclusion

I grant the tenant an order under section 67 for the sum of **\$1320.17**. 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*.