

DECISION

Dispute Codes:

MNSD, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord and an application by the tenant.

The landlord applied for dispute resolution on April 23, 2010 for;

- A Monetary Order to recover unpaid rent of \$850, and to retain the security Deposit in partial satisfaction of the monetary claim.
- Recovery of the filing fee associated with this application in the amount of \$50.

The tenant applied for dispute resolution on February 04, 2010 for:

- Return of the security deposit and for double the deposit in the amount of \$850.

Both parties attended the conference call hearing and participated with their submissions, testimony and documentary evidence, and were permitted to ask questions and attempt to settle all matters. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed for unpaid rent, and to retain the security deposit in satisfaction of the monetary claim?

Is the tenant entitled double the original security deposit?

Background and Evidence

This tenancy began July 06, 2009 and ended November 08, 2009. Rent was in the amount of \$850 per month payable in advance on the 1st of each month. At the outset

of the tenancy the landlord collected a security deposit of \$425. The tenant vacated without notice to the landlord on November 08, 2009, and the circumstances did not afford the parties to mutually conduct a move out inspection.

The tenant claims that on November 20, 2009 she mailed the landlord a letter with her forwarding address by regular mail. The landlord denies receiving such a letter from the tenant – but acknowledged receiving the tenant's application for dispute resolution by March 08, 2010, which also contained the tenant's forwarding address. The tenant provided a mail registration receipt dated February 08, 2010.

The landlord claims unpaid rent for the month of November 2009 in the amount of \$850, which the tenant acknowledges was not paid prior to vacating the rental unit.

The parties presented additional, but mostly irrelevant evidence and testimony in support of their claims.

Analysis

I have considered all evidence and all submissions to both claims and have considered all testimony given in the hearing.

As to the landlord's claim:

On the face of the evidence the landlord is entitled to unpaid rent in the amount of \$850. As the landlord's claim has merit the landlord is also entitled to recover the filing fee of \$50 for an entitlement quantum of **\$900**.

As to the tenant's claim:

The landlord's evidence is that they received the tenant's written forwarding address on or about March 08, 2010. The landlord has not returned the security deposit, and did not apply to retain the deposit until April 23, 2010.

Section 38 of the Residential Tenancy Act provides as follows (**emphasis for ease**):

Section 38(1)

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.

Further: 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 Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit **or** make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

I find that the tenancy ended on November 08, 2009, and that the tenant provided their forwarding address in writing and that it was received by the landlord by March 08, 2010. I find that the landlord failed to repay the security deposit **or** make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing –but making application on April 23, 2010.

Therefore, **I find** that the tenant has established a claim for the security deposit of \$425 and double the base amount of the security deposit in the amount of \$425, for a total of **\$850**.

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|------------------------|-------|
| Landlord's entitlement | \$900 |
| Tenant's entitlement | \$850 |

Tenant owes landlord **\$ 50**

As the landlord still holds the security deposit in the amount of \$425, **I order** that the landlord retain \$50 of the security deposit in satisfaction of their claim, and return the balance to the tenant, forthwith.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the balance of their security deposit in the amount of **\$375**. 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*.