

DECISION

Dispute Codes:

MNSD

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 compensation under section 38 for double the security deposit.

Both, the tenant and the landlord were represented at today's hearing and provided sworn testimony and prior submissions. Both parties consented to an amendment in the style of cause reflecting the proper respondents. Proper parties are as stipulated.

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed facts before me, under affirmed testimony by both parties, are as follows.

The tenancy began on December 01, 2008 and ended June 15, 2009. The landlord collected a security deposit of \$1950 at the outset of the tenancy. There was a move in inspection conducted at the outset. There was a move out inspection conducted at the end of the tenancy by both parties, but it was not recorded by the landlord. However, the parties agree that there were no issues noted by the end of the inspection and that the landlord and tenant agreed the security deposit would be returned to the tenant.

The tenant's testimony is that his spouse provided the landlord a forwarding address by telephone upon vacating, and subsequently forwarded their mailing address in a letter to the landlord on September 02, 2009. The landlord claims they have not received the forwarding address in writing subsequent to September 02, 2009, and has not had it in

their possession until recently. The landlord testified they have recently forwarded a cheque to the tenant for the full amount of the security deposit.

Contrary to the testimony and submissions of the tenant, this hearing does not have benefit of a copy of the tenant's letter to the landlord providing their forwarding address, or a copy of the tenancy agreement.

Analysis

The onus is on the applicant to prove their claim.

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

Section 38(1) of the Act, in part, 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.

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.

In the absence of evidence from the party with the burden of proof, and as result of the contrasting testimony of the parties, I find that the landlord did not receive a forwarding address in writing. Nonetheless, the landlord retains the security deposit and has no basis upon which to retain it, is statute barred from making an application for dispute resolution to retain it and desires to return it. As the requirements enabling the tenant entitlement to double the security deposit have not been established by the tenant, the tenant is never the less entitled to the return of the original deposit with any accrued interest.

The landlord currently holds a security deposit of \$1950 and was obligated to return this amount together with the \$2.48 in interest which had accrued. As a result I find the tenant has established an entitlement claim for **\$1952.48**

Conclusion

I grant the tenant an order under section 67 for the sum of **\$1952.48**. 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*.