

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 balance of the security deposit in the amount of \$475.

Both, the tenant and the landlord were represented at today's hearing and provided sworn testimony and prior submissions. Proper parties are as stipulated. Both parties were given a full opportunity to present evidence and make submissions. 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 tenant entitled to the monetary amount claimed?

Is the tenant entitled to double the security deposit amount claimed as prescribed by Section 38 of the Act?

The onus is on the applicant to prove their legal obligations in respect to their claim.

The onus is on the landlord to show they complied with section 38(1) of the Act.

Background and Evidence

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

The tenancy began on March 01, 2009 and ended February 28, 2010. The landlord collected a security deposit of \$750 at the outset of the tenancy. There was a move in inspection conducted at the outset. The parties agree that the period of the tenancy was acrimonious with incidents of disagreement. There was a move out inspection conducted at the end of the tenancy on February 28, 2010, by both parties, and recorded by the landlord. The parties agree that at the end of the tenancy there were some issues noted by the parties and certain deficiencies were recorded on the end of

tenancy condition inspection report. The parties came to agreement that the landlord would retain \$275 of the security deposit and the landlord would return \$475 to the tenant. The tenant provided their forwarding address in writing on the Condition Inspection Report, and the landlord acknowledges receiving it as such.

The tenant claims that the landlord did not and has not returned the balance of \$475 as agreed. They have never received this amount from the landlord by any means. Therefore, on March 17, 2010 they filed for dispute resolution for its return and all communication with the landlord ceased.

The landlord claims that they returned the balance of \$475 by cheque via regular mail and that the tenant confirmed by telephone on March 15, 2010 that they received it.

Both parties provided chronological accounts of what transpired between them after the tenancy ended, and these accounts are in sharp contrast to each other.

The landlord testified that due to the acrimonious nature of the tenancy relationship he took deliberate steps to ensure that transactions and communication with the tenant was documented and conducted to the best of his ability. The landlord provided a copy of the cheque he claims he mailed to the tenant on March 7, 2010 in the amount of \$475 – mailing it to the tenant's confirmed forwarding address. The landlord claims it has never cleared his bank account although he left it available to the tenant, he has never received the cheque back, and he only recently placed a stop payment on it – awaiting the outcome of this hearing - the landlord effectively retaining the amount of \$475.

Analysis

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

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.

38(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

I accept the tenant's evidence that they provided the landlord with a forwarding address on February 28, 2010, but that by March 15, 2010 they did not receive the balance of their security deposit in the amount of \$475. None the less, **I prefer** the landlord's evidence that they mailed a cheque to the tenant in the amount of the agreed balance of the security deposit by regular mail on March 07, 2010, and that they mailed it to the forwarding address provided by the tenant in accordance with subsection (8). I also prefer the landlord's evidence that he took the step of confirming with the tenant that they received it. The landlord retains the security deposit of \$475 and has no basis upon which 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 balance of the deposit upon which the parties originally agreed. As a result **I find** the tenant has established an entitlement claim for **\$475**.

I Order the landlord to pay the tenant the amount of **\$475**, forthwith. So as to perfect this order, **I further Order**, that the landlord send the payment to the tenant's forwarding address as was provided, and that the landlord send it only by **Registered Mail**.

Conclusion

I grant the tenant an order under section 67 for the sum of **\$475**. 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*.