

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 under section 38 of the Act. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both, the tenant and the landlord were represented at today's hearing

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit and amounts claimed?

Background and Evidence

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

The tenancy began on March 01, 2008 and ended on November 29, 2009. The landlord collected a security deposit of \$675 at the outset of the tenancy. There was no move in inspection conducted at the outset. There was a move out inspection conducted at the end of the tenancy by both parties, but the landlord did not record the results of the inspection. At the end of the inspection the landlord initially and immediately returned the full amount of the security deposit by cheque, but shortly after withdrew the cheque claiming they noted some damage to the unit. The parties did not arrive at an agreement on the administration of the security deposit and the landlord retains the full amount of the deposit to this day. The tenant and landlord testified that during the tenancy period they communicated by e-mail as the landlord resided out of the country. The landlord acknowledges receiving the tenant's forwarding address by e-mail before and after the tenant vacated the rental unit on November 29, 2009.

Analysis

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

I accept the testimony of the parties that they communicated primarily, if not solely, by e-mail, and that in this tenancy *in writing* and *by e-mail* are the same.

Section 38(1) of the Residential Tenancy Act (the Act) provides as follows (emphasis mine)

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.

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)(b).

The landlord currently holds a security deposit of \$675 and was obligated under section 38 to return this amount together with the \$8.47 in interest which had accrued. The amount which is doubled is the \$675 original amount of the deposit before interest. As a result I find the tenant has established an entitlement claim for **\$1358.47** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$1408.47**.

Conclusion

I grant the tenant an Order under section 67 for the sum of **\$1408.47**. 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*.