

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 double the original security deposit under section 38 of the Residential Tenancy Act (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 and were permitted to ask questions, make submissions and provide testimony.

Issue(s) to be Decided

Is the tenant entitled to the return of double the original security deposit?

Background and Evidence

The undisputed facts before me are as follows. The tenancy began June 01, 2009 and ended on March 01, 2010. The landlord collected a security deposit of \$312.50 at the outset of the tenancy. The parties did not complete a move-in inspection at the outset of the tenancy, nor a move-out inspection at the end of the tenancy. At the end of the tenancy the parties did not arrive at a formal agreement on the administration of the security deposit. The tenant testified that during the tenancy she had no contact with the respondent attending in this matter, and that normal communication with the site manager of the day was typically by text or e-mail messaging. The tenant testified and the landlord does not dispute receiving the tenant's forwarding address by text messaging on March 01, 2010.

The landlord testified that once they determined not to file for dispute resolution, the landlord sent the tenant a cheque for the full amount of the security deposit – and testified that he recalls posting the cheque on March 17, 2010. The landlord provided a copy of the front and back of the cheque sent to the tenant. The tenant testified she received the cheque (dated March 01, 2010) no earlier than on March 22, 2010 and cashed it March 24, 2010. The landlord argued that since the tenant cashed the cheque, the tenant is then precluded from filing an application for compensation under the Act.

Analysis

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

I accept the testimony of the tenant that the parties communicated primarily by electronic mail messaging, and occasionally by telephone. Therefore I find that in this tenancy *in writing* and *by electronic messaging* are the same in respect to section 38 of the Act.

I do not accept the landlord's argument that the tenant extinguished her right to file for dispute resolution under section 38 of the Act by cashing the landlord's cheque in the original amount of the deposit. The landlord may have been referring to the Contractual Law principle of *Accord and Satisfaction*, which would state that in this type of case, the tenant would have been precluded from pursuing any further remedy had the landlord indicated on the cheque that cashing it constituted *full and final settlement*, or other words to this effect. I find this set of circumstances do not apply in this matter.

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.

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).

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 mailed the full amount of the security deposit on March 17, 2010, and was obligated under section 38 to return this amount, and that it be post-marked or delivered in accordance with Section 88 (c)(d)or(f), or given personally to the tenant, no later than March 16, 2010. The amount which is doubled is the \$312.50 original amount of the deposit. As a result I find the tenant has established an entitlement claim for **\$312.50** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$362.50**.

Conclusion

I grant the tenant an Order under section 67 for the sum of **\$362.50**. The tenant is being given this Order. 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*.