

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on May 8, 2010. The Landlord is deemed to have received the hearing documents on May 13, 2010, five days after they were mailed, in accordance with section 90 of the *Act*.

The Tenant appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy agreement began on December 1, 2007 and ended on May 31, 2008. Rent was payable on the first of each month in the amount of \$900.00 and the Tenant paid a security deposit of \$450.00 on December 1, 2007. Neither move-in nor move-out inspection reports were completed in the presence of the Tenant.

The Tenant argued that she has been seeking the return of her security deposit since vacating the rental unit at the end of May 2008 and has provided her forwarding address in three separate letters. Her evidence supports that on April 28, 2009 a third letter was sent to the Landlord, via registered mail, which provided the Landlord with the Tenant's forwarding address in writing and with another request for return of the deposit. After sending a letter in the winter of 2009 she received two irate voice messages from the Landlord who continues to refuse to return her deposit.

Analysis

All of the testimony and documentary evidence was carefully considered.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her evidence.

I note that while this hearing did not take place until today, July 20, 2010, the Tenant filed her application for dispute resolution on May 6, 2010. Section 60(1) of the *Act* provides that an application must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned. Therefore the Tenant has filed her application within the required time period and the application may proceed.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

The evidence supports that the tenancy ended May 31, 2008 and the Tenant provided the Landlord with her forwarding address in writing on April 28, 2009, via registered mail. The Landlord is deemed to have received the forwarding address on May 3, 2009.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than May 18, 2009.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double the security deposit plus interest.

I find that the Tenant has succeeded with her application therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Doubled Security Deposit 2 x \$450.00	\$900.00
Interest owed on the Security Deposit of \$450.00 from December 1, 2007 to July 20, 2010	7.33
Filing Fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$957.33

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$957.33**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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*.

Dated: July 20, 2010.

Dispute Resolution Officer