

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order to recover double her security deposit.

The tenant served the landlord in person on March 26, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, and made their submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to recover double her security deposit?

Background and Evidence

Both Parties agree that this month to month tenancy started on October 01, 2009 and ended on January 28, 2010. Rent for this unit was \$775.00 per month and was due on the first of each month. The tenant paid a security deposit of \$387.50 on September 30, 2009.

The tenant testifies that she moved from the rental unit by agreement with the landlords' agent and gave this agent her forwarding address in writing on the same day she was given notice to move from the unit on December 31, 2009. The tenant claims the landlords have not returned her security deposit to her within the 15 days and have not made an application to keep it. The tenant seeks to recover double the amount of her security deposit from the landlords.

The landlord attending states she did not receive the tenants forwarding address and the landlords have provided written submissions concerning damage to the rental unit caused by a flood. The evidence presented by the landlord concerning damages to the rental unit is not

pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Analysis

I have carefully considered the evidence before me, including the affirmed evidence of both parties. I find the tenant has applied for the return of double her security deposit under the *Manufactured Home Park Tenancy Act* when in fact she should have made her application under the *Residential Tenancy Act* as the tenant rented both the manufactured home and the site from the landlord and the *Manufactured Home Park Tenancy Act* would not apply in this case pursuant to section 4 of that *Act*.

Consequently I have revised my decision, after looking at the evidence again, and will in fact deal with this matter under the *Residential Tenancy Act*. The *Residential Tenancy Act* section 38 states: a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

In this matter the landlord has testified that she did not receive the tenants forwarding address in writing and the tenant testified that she gave her address to the property manager of the park. When the tenants' evidence is contradicted by the landlord the burden of proof falls on the tenant to provide corroborating evidence that she did give her forwarding address in writing to the property manager on December 31, 2009 as claimed. In this instance I have no corroborating evidence before me that the tenant did give her forwarding address in writing to the property manager and as such I find she is not entitled to recover double her security deposit. I do find however, that the tenants address on her application is her forwarding address and will be accepted as such therefore, I find she is entitled to the return of her security deposit of \$387.50 only.

I would like both parties to further note that whether this application was heard under the *Manufactured Home Park Tenancy Act* or the *Residential Tenancy Act* the outcome would be the same and the tenant would be entitled to recover her security deposit only.

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. I ORDER the landlord to return the tenants security deposit of \$387.50. A copy of the tenants' decision will be accompanied by a Monetary Order for \$387.50. The order must be served on the respondent 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 22, 2010.

Dispute Resolution Officer