

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing dealt with the tenant's application for return of double the security deposit and recovery of the filing fee. The landlord did not appear at the hearing. The tenant testified that he served the landlord with notification of this hearing by registered mail sent to the rental unit address on March 18, 2010. The tenant testified and provided a copy of an email dated February 19, 2010 that the landlord informed the tenant the landlord had moved into the rental unit. The registered mail was returned to the tenant as unclaimed. I was satisfied the tenant sufficiently served the landlord in accordance with the Act and I proceeded to hear from the tenant without the landlord present.

Issues(s) to be Decided

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

Background and Evidence

The tenant provided testimony as follows. The tenancy began October 1, 2009 and the tenant paid a \$1,000.00 security deposit. The tenant was required to pay rent of \$2,000.00 per month. The tenant vacated the rental unit January 31, 2010. The landlord and tenant participated in inspections together but the landlord did not prepare condition inspection reports with the tenant.

I was provided documentary evidence that on February 19, 2010 the tenant sent the landlord an email requesting return of the security deposit. The landlord replied via email on February 19, 2010 and indicated there may be damages in excess of the \$1,000.00 security deposit. The landlord subsequently communicates he will have his lawyer deal with the issue. On February 19, 2010 the tenant advises the landlord via email to return the security deposit or make an application for dispute resolution and the

tenant provides his forwarding address. On February 23, 2010 the tenant sent his forwarding address to the landlord via registered mail sent to the rental unit as this was the address of residence provided by the landlord.

As evidence for this hearing, the tenant provided copies of the above described emails and copies of the registered mail receipts for service of the tenant's forwarding address and notification of this hearing.

The tenant also stated that subsequent to the end of tenancy the landlord prepared a condition inspection report, scanned and emailed it to the tenant. The tenant did not provide a copy of the report as evidence but testified that he did not sign it and had not authorized any deductions from the security deposit.

Analysis

Section 38 of the Act provides for the return of security deposits. Section 38(1) of the Act requires a landlord to return a security deposit and interest to the tenant or make an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

Based upon the undisputed evidence of the tenant, I accept that the tenant paid a \$1,000.00 security deposit to the landlord, the tenant did not authorize the landlord to retain the security deposit, the tenant had not extinguished his right to the security deposit, and the landlord has not returned the security deposit to the tenant. I am also satisfied the tenant sufficiently served the landlord the tenant's forwarding address in writing on February 23, 2010 and pursuant to section 90 it is deemed to be received by

the landlord five days later. Accordingly, I find that the landlord received the tenant's forwarding address on February 28, 2010 and the landlord had until March 15, 2010 to either return the security deposit or make an Application for Dispute Resolution.

In light of the above, I find the landlord violated section 38(1) of the Act and must now pay the tenant double the security deposit in accordance with section 38(6). As the tenant was successful in this application, the tenant is awarded the filing fee paid for making this application. I provide a Monetary Order to the tenant in the total amount of \$2,050.00 to serve upon the landlord. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The tenant was successful in establishing the landlord failed to comply with the Act with respect to the security deposit. The tenant is provided with a Monetary Order in the amount of \$2,050.00 to serve upon the landlord.

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 29, 2010.

Dispute Resolution Officer