

DECISION

Dispute Codes MNDC, MNSD

Introduction

The tenant applied under section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement and for the return of her security deposit under section 38 of the *Act*.

The landlords did not attend the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that she sent the landlord a copy of her application for dispute resolution package to the landlord's last known address by registered mail on June 9, 2010. She submitted into evidence a copy of the Canada Post Tracking Number and confirmation that her registered mail was returned to her on June 10, 2010 as the landlord has moved. She also testified that she also sent the landlord this application by FedEx courier on June 3, 2010. I am satisfied that the tenant served the landlord with a copy of the application for dispute resolution in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary order? Is the tenant entitled to a return of her security deposit?

Background and Evidence

The tenant testified that her six-month fixed term tenancy began on June 1, 2009. In advance of the scheduled end of her fixed term tenancy, she vacated the rental premises on November 28, 2009. She testified that she submitted a December 11, 2009 written request to the landlord by email to return the \$350.00 security deposit she paid for this tenancy on June 2, 2009. She submitted copies of her email exchanges with the landlord confirming that she had provided her forwarding address to the

landlord with her request for a return of her security deposit. She testified that emails were the standard way that she communicated with the landlord during this tenancy.

Her application for a monetary order included her request for compensation for a number of expenses or losses she incurred during this tenancy. These included requests for payments for the stove, a disputed utility bill, a cancelled cheque, three internet cables and a dispute regarding the landlord's retention of money from a \$100.00 bill she gave him. The tenant maintained that she submitted receipts for most of these claims along with her application for dispute resolution. The Residential Tenancy Branch had no record of these receipts having been submitted.

Analysis

Monetary Order for Damage or Loss

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant, in this case the tenant, must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am not satisfied that the tenant has provided sufficient evidence to substantiate her application for a monetary award for damage or loss. I dismiss the tenant's claim for a monetary award for damage or loss.

Security Deposit

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return

the deposit or file an Application for Dispute Resolution for an Order to make a claim to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and in accordance with section 38(6) the landlord must pay the tenant double the amount of the deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Policy Guidelines would seem to be of relevance to the consideration of this application:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the alter of the end of the tenancy or the date the tenant's forwarding address is received in writing;...*

Based on the undisputed evidence presented, I accept that the tenant provided written notification to the landlord of her forwarding address and that the landlord confirmed that he had her forwarding address. I find that the landlord had no legal basis for withholding the tenant's security deposit. The landlord did not file an application for dispute resolution of this issue within 15 days of receiving the tenants' forwarding address in writing, nor did he obtain the tenants' written permission to withhold these funds. The validity of any monetary claim that the landlord may have against the tenants has no bearing on the landlord's obligation to return the entire security deposit to the tenants in accordance with section 38 of the *Act*.

I find that the tenant is entitled to a monetary order of \$700.00, amounting to double the security deposit with interest. No interest is payable over this period.

Conclusion

I dismiss the tenant's application for a monetary award for damage or loss. I grant the tenant a monetary order of \$700.00 for the return of double her security deposit.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.