

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 Landlords for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the female resident manager at the rental unit on approximately May 7, 2010.

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 was effective April 1, 2008, and ended September 30, 2009, after the Tenant issued the Landlord written notice to end the tenancy on August 31, 2009. Rent was payable on the first of each month in the amount of \$850.00 and the Tenant paid a security deposit of \$425.00 on March 17, 2008.

The Tenant testified that she requested the return of her security deposit verbally, on several occasions and left the resident manager messages with her forwarding address. She completed the first paper application for dispute resolution on March 5, 2010, as provided in her evidence; however she did not complete the application because she was told to give the Landlord her forwarding address in writing. The written request for the return of her security deposit, which included her forwarding address, was personally served to the husband of the resident manager at the rental building shortly after March 5, 2010. The Tenant argued that she had given the person rent in the past so he has acted on behalf of the Landlord in the past.

She is seeking the return of double her security deposit plus recovery of the filing fee.

Analysis

All of the testimony and documentary evidence was carefully considered.

Given the evidence before me, in the absence of any evidence from the Landlords 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 testimony and evidence.

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 September 30, 2009 and the Tenant provided the Landlords with her forwarding address approximately March 8, 2010.

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. The Landlords did neither.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are 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 and pet 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 balance owed of her 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 Balance owed on Security Deposit 2 x \$425.00	\$850.00
Interest owed on the Security Deposit of \$425.00	5.05
Filing Fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$905.05

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 **\$905.05**. The order must be served on the respondent Landlords 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: September 20, 2010.

Dispute Resolution Officer