

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) to obtain a return of her security deposit from the landlord.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant said that her male friend handed a copy of her application for dispute resolution to the landlord on June 2, 2010. Her male friend testified that he did so in the accompaniment of his daughter that day. The landlord said that she received the tenant's application when she found it in her mail slot through the door to her office on June 5, 2010. Although there is conflicting testimony regarding how the tenant's application for dispute resolution was served, the landlord agreed that she did receive the tenant's application well in advance of this hearing. I accept that the application for dispute resolution was served to the landlord and that the tenant's application is in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to obtain a return of her security deposit from the landlord?

Background and Evidence

This month-to-month tenancy commenced on November 1, 2009. Monthly rent was set at \$750.00, payable on the first of each month. The landlord said that she continues to hold the tenant's \$375.00 security deposit paid on October 24, 2009.

The parties agree that the tenant vacated the rental premises on March 31, 2010. The tenant said that she advised the landlord in mid-February that she was planning to vacate the rental premises at the end of March 2010. She said that on the same date that she moved out and participated in the joint move-out condition inspection, she provided written notice of her forwarding address to the landlord. She said that there

was no damage to the rental premises whatsoever and that the premises were left in clean condition. The tenant applied for a return of her security deposit when the landlord did not return it to her within 15 days of providing her written forwarding address at the end of her tenancy.

The landlord said that the tenant never gave formal notice that she was ending this tenancy and that she was unaware that the tenant was planning to move. She gave sworn testimony that the tenant did not provide her forwarding address to her in writing when she left the rental premises and that she did not have a forwarding address for the tenant until she received the tenant's application for dispute resolution on June 5, 2010. She also said that she withheld the return of the tenant's security deposit because the tenant caused damage to the rental premises and the carpets needed cleaning after the tenant left. The landlord confirmed that she did not apply for dispute resolution regarding the damage to the premises, nor had she applied for an Order from a Dispute Resolution Officer to retain all or a portion of the tenant's security deposit.

Analysis

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 in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord 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 the landlord must pay the tenant double the amount of the deposit (section 38(6)). At the hearing, the tenant requested that the landlord be required to return double her security deposit.

With respect to the return of the security deposit, the triggering event is the provision by the tenant of the forwarding address. In this case, there is conflicting testimony as to whether the tenant provided the landlord with her forwarding address in writing when she left the rental premises. The tenant kept no copy of the written notice she provided to the landlord and entered no such document into evidence. As such, the tenant did

not demonstrate that she provided her forwarding address to the landlord when she vacated the rental unit on March 31, 2010.

At the hearing, the landlord testified that she received the tenant's forwarding address on June 5, 2010. Based on this sworn testimony of the landlord, the landlord had 15 days after June 15, 2010 to forward the tenant the security deposit in order to avoid becoming responsible for paying the tenant double the amount of the security deposit.

I find that the landlord did not return the tenant's security deposit as required by section 38 of the *Act* and did not apply for dispute resolution herself to obtain authorization to retain the tenant's security deposit. I find that the tenant is entitled to a monetary Order requiring the landlord to return double her security deposit plus interest as the landlord has not complied with section 38 of the *Act*. No interest is payable over this period.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$750.00. 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*.