

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 the security deposit and to recover the filing fee.

The tenant served the landlord by registered mail on May 20, 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, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issue

The parties advised me there was an error in the spelling of the landlords' last name. The Parties did not raise any objections to this error being corrected and the landlords name has been amended.

Issues(s) to be Decided

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

Background and Evidence

Both parties agree that this tenancy started on December 15, 2007 and ended on May 03, 2010. Rent for this unit was \$2,000.00 per month and was due on the first of each month. The tenant paid a security deposit of \$1,000.00 on December 04, 2007.

The tenant testifies that the landlord did not carry out a move in condition inspection of the rental unit but did conduct a move out inspection with them and at the end of that inspection he stated that there were no damages and wrote down the tenants forwarding address on that date. The tenant testifies that the landlord did not return her security deposit and she sent him another letter with her forwarding address on August 16, 2010. The tenant claims the landlord did not respond to her letter or return her security deposit within 15 days of receiving her forwarding address on either occasion. The tenant has provided a copy of this letter and her witness testifies that he was present on May 03, 2010 and saw the landlord write down the tenants forwarding address on this day.

The landlord testifies that he has no recollection of the tenant giving him her forwarding address on May 03, 2010. The landlord states he tried to get in touch with the tenant and left messages for her. The landlord states that he did get the tenants forwarding address in writing in a letter dated August 16, 2010 but he did not get this until sometime later as he was out of town in rehab after surgery. The landlord states he sent the tenant a cheque for the security deposit on September 30, 2010 by registered mail. The landlord claims it was not his intention to keep the security deposit but he could not find the tenant to return it.

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenant testifies that she has not received a cheque from the landlord as of today's date and she received no phone calls or messages from the landlord since she moved from the rental unit.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding 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)(b) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.

When one Party's evidence is contradicted by the other Party the burden of proof falls on the claimant to provide corroborating evidence to support her claim. In this case the landlord contradicts the tenants' evidence and that of her witness that she gave him her forwarding address in writing on May 03, 2010. The tenant would therefore be required to provide additional corroborating evidence to meet the burden of proof in this matter.

However, as the landlord does not dispute that he received the tenants forwarding address in her letter dated August 16, 2010 I will accept this date as the date the landlord received the tenants forwarding address in writing. As a result, the landlord had until August 31, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit or file an application to keep it within the 15 days allowed under the *Act*. Therefore, I find that the tenant has established a claim for the return of double the

Residential Tenancy Branch
Ministry of Housing and Social Development

security deposit of **\$2,000.00** plus accrued interest of **\$16.16** on the original amount pursuant to section 38(6)(b) of the *Act*.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. I find the tenant is entitled to a Monetary Order as follows pursuant to section 67 of the *Act*.

Double the security deposit	\$2,000.00
Filing fee	\$50.00
Total amount due to the tenants	\$2,066.16

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,066.16**. 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: October 05, 2010.

Dispute Resolution Officer