

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover her filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were 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 by registered mail on May 21, 2010. She provided the Canada Post Tracking Number to confirm this mailing. The landlord said that he received her application. I am satisfied that the tenant served this document in accordance with the *Act*.

The tenant said that she did not receive the landlord's September 14, 2010 letter, entered into written evidence by the landlord. She said that she changed mailing addresses recently and had not provided this change of address to the landlord. At the hearing, the landlord read key portions of his September 14, 2010 to the tenant.

Issues(s) to be Decided

Is the tenant entitled to receive a monetary Order for double that portion of her security and pet deposits not returned to her by landlord within fifteen days of the end of her tenancy? Is the tenant entitled to recover her filing fee for this application?

Background and Evidence

This periodic tenancy commenced on April 9, 2009. At the time, the tenant vacated the rental premises on April 30, 2010, she was paying \$900.00 in monthly rent on the first of each month. The landlord confirmed that she paid \$450.00 for a security deposit and \$450.00 for a pet deposit on April 9, 2009.

The landlord testified that he was hospitalized with a stroke for a period in February 2010. He said that he relied on a junior assistant to look after interactions with tenants at this property for a three-month period following his hospitalization. He said that he did not realize until July 2010 that the junior assistant was not complying with the *Act* with respect to deductions retained by the landlord at the end of tenancies. The landlord that the landlord had no authority to withhold \$373.35 from her pet damage and security deposits when \$526.65 of the \$900.00 deposits was returned to the tenant on May 6, 2010. The landlord confirmed the tenant's testimony that she provided the landlord written notice that she would be moving as well as her forwarding address five weeks in advance of her vacating the rental premises on April 30, 2010.

The tenant said that she was unaware until the hearing that the landlord had undergone health problems that led to the retention of \$373.35 from her pet damage and security deposits. However, she said that the landlord's improper handling of this matter had caused her problems. She asked for a return of double that portion of her security deposit that was not returned to her within 15 days of the end of her tenancy. She also requested the recovery of her filing fee for this application.

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)).

Based on the evidence presented by both parties, I find that the landlord did not comply with Section 38 and he must pay the tenant double the pet damage and security deposits. The original deposits totaled \$900.00 and doubling the entire deposits would now result in a monetary Order being made in favour of the tenant in the sum of \$1,800.00. However, the tenant received and cashed a cheque from the landlord in the sum of \$526.65. Although the landlord sent an additional cheque for \$423.35 to the tenant on September 13, 2010, this cheque was sent to her former mailing address and will likely be returned by Canada Post to the landlord shortly. As the landlord did return part of the deposit within 15 days of receipt of the end of this tenancy, in the attached monetary Order I will double only the \$373.35 balance that was not returned to the tenant in May 2010, for a total of \$746.70.

I allow the tenant to recover her \$50.00 filing fee for this application from the landlord which I include in the monetary Order in the tenant's favour.

Conclusion

I issue a monetary Order in favour of the tenant in the sum of \$796.70. 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*.