

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenants to both the Landlords, was done in accordance with section 89 of the *Act*, sent via registered mail on August 24, 2010. Landlord RL confirmed receipt of the hearing packages.

Landlord RL and the Tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. I note that Landlord RE did not appear although duly served.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

This tenancy ended on May 31, 2010 in accordance with the tenancy agreement. Rent was \$1,250.00 per month and a security deposit of \$625.00 was paid in February 2007.

The Tenants testified that they entered into the original tenancy agreement with Landlord RE, who Tenant MN testified that she gave proper notice to to end the tenancy, effective May 31, 2010. The Tenants supplied evidence and gave affirmed testimony that the Landlords were provided the Tenants' forwarding address on the rent receipt dated May 1, 2010. I note the rent receipt signed by the Landlord contained the Tenants' forwarding address.

The Tenant MN testified that she called Landlord RE to arrange to drop off the keys to the rental unit and was informed the locks had been changed and gave undisputed testimony they were not given a chance for a move out inspection.

Landlord RL, who was not involved in the original tenancy agreement, testified Landlord RE was to attend the hearing, but in his absence, could not dispute the Tenants' testimony regarding the fact their security deposit had not been returned or that the Tenants had supplied their forwarding address.

The Landlords have not filed for Dispute Resolution.

Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants 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.

In this case the evidence and testimony supports that the Tenants provided the Landlords with their forwarding address on May 1, 2010.

The Landlords have admitted that they did not apply for dispute resolution to keep the security deposit, do not have an Order allowing them to keep the \$625.00, and they do not have the Tenants' written consent to retain the security deposit.

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. In this case the Landlords were required to return the Tenants' security deposit in full or file for dispute resolution no later than June 15, 2010.

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 Tenants have succeeded in proving the test for damage

or loss as listed above and I approve their claim for the return of their security deposit plus interest.

I find that the Tenants have succeeded with their application therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Doubled Security Deposit owed 2 x \$625.00	\$1,250.00
Interest owed on the Security Deposit of \$625.00 from February 1, 2007 to June 1, 2010	18.08
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$1,318.08

Pursuant to the policy guideline, I have provided the Tenants with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants are granted a monetary order for \$1,318.08.

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 18, 2010.

Dispute Resolution Officer