



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided a registered mail receipt and the requisite tracking number for the registered mail. I note that failure to accept registered mail is not a ground for Review.

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed facts before me are as follows.

The tenancy began in January 2009 and ended on April 30, 2010. The landlord collected a security deposit of \$537.50 at the outset of the tenancy. There was no move in inspection conducted at the outset. There was no move out inspection conducted at the end of the tenancy. No inspection reports were completed or provided

to the tenant. the tenant testified that the landlord was provided the tenants' forwarding address in writing prior to the tenant vacating; but, none the less the landlord was in possession of the tenant's forwarding address in writing on the day the tenant vacated the rental unit. The landlord subsequently returned to the tenant \$72.50 which the tenant acknowledges receiving.

Analysis

On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

Section 38(1) of the Act provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$465 and was obligated under section 38 to return this amount together with the \$72.50 which the landlord did return. The amount which is doubled is the \$537.50 original amount of the deposit before interest. As a result of all the above, I find the tenant has established an entitlement claim for double the original security deposit – minus the amount the landlord has returned – for an entitlement of **\$1002.50**. The tenant is further entitled to recovery of the **\$50** filing fee for an entitlement total of **\$1052.50**.

Conclusion

I grant the tenant an order under section 67 for the sum of **\$1052.50**. If necessary, this order may be filed in the Small Claims Court and enforced 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*.