



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 his security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on August 25, 2010. The Tenant provided a tracking number and stated the delivery date was August 26, 2010.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

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

Background and Evidence

This tenancy ended on June 30, 2010 after two months. A security deposit of \$545.00 was paid on May 1, 2010.

The Tenant supplied evidence and gave affirmed testimony that the Landlord was provided the Tenant's forwarding address, along with a request that the security deposit be returned, by express mail on July 27, 2010. I note the Landlord acknowledged receiving the Tenant's forwarding address.

The Tenant stated that there was no move in or move out inspection or written report.

The Landlord testified that he believed he could deduct the amount of alleged damage in the amount of \$154.00 and forward the balance to the Tenant, which is what he did.

The Landlord testified that the Tenant caused damage to the rental unit, but confirmed that there was no move in or move out inspection or written report.

The Landlord has 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 Tenant 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 Tenant provided the Landlord with his forwarding address on July 27, 2010 by registered mail.

The Landlord did not apply for dispute resolution to keep all or part of the security deposit, does not have an Order allowing him to keep the security deposit, and does not have the Tenant's 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 Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than August 11, 2010.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is 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 Tenant has succeeded in proving the test for damage or loss as listed above and I approve his claim for the return of his security deposit.

I find that the Tenant has succeeded with his application therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Doubled Security Deposit owed 2 x \$545.00	\$1,090.00
Less amount paid by Landlord	(\$391.00)
Filing Fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$749.00

Pursuant to the policy guideline, I have provided the Tenant 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 Tenant is granted a monetary order for \$749.00.

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 29, 2010.

Dispute Resolution Officer