

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 Application and Notice of the Hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on August 26, 2010. Tenant DS appeared and gave confirmation information of the service and I accept that the Landlord was duly and properly served, but failed to appear.

I note that the Tenants applied for other remedies under the *Act*, but I have determined these are not applicable to the Tenants' request.

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 \$880.00 per month and a security deposit of \$440.00 was paid in May 2009.

The Tenant testified that he and Tenant SK began the tenancy on May 15, 2009, and that they gave proper written notice to end the tenancy, effective May 31, 2010. The Tenants supplied evidence of a written notice sent by the Landlord to the Tenants acknowledging the Landlord received a full month's written notice.

The Tenant testified that he and Tenant SK took the final two weeks of May 2010 to clean the rental unit and that Tenant SK and the Agent for the Landlord conducted a move out inspection at the end of May 2010, at which time the Agent for the Landlord was supplied the Tenants' forwarding address. The Tenants never received a copy of the completed move out inspection report and eventually they received a cheque in the amount of \$84.00, sent to the forwarding address provided by the Tenants.

The Tenant testified that since that time, he has made repeated attempts to contact the Agent for the Landlord for a breakdown of the charges claimed against the security deposit, but has received no return phone call.

Analysis

Based on the above testimony and 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 Tenants bear the burden of proof.

In this case the evidence and testimony support that the Tenants provided the Landlord with their forwarding address at the end of May 2010.

In the absence of evidence from the Landlord, I find that the Landlord did not apply for dispute resolution to keep the security deposit, does not have an Order allowing them to keep the \$440.00, and does 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 Landlord was 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 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 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 listed below.

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 \$440.00	\$880.00
Filing fee	\$50.00
Less Amount paid by the Landlord to the Tenants	<u>(\$84.00)</u>
TOTAL AMOUNT DUE TO THE TENANTS	\$846.00

Pursuant to the policy guideline, I have provided the Tenants with a **monetary order** for **\$846.00**. 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 **\$846.00**.

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: November 12, 2010.

Dispute Resolution Officer