

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of all or a portion of his security deposit and authorization to recover his filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord did not attend this hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. Prior to the hearing, he submitted into written evidence the unclaimed registered letter containing a copy of his application for dispute resolution that he sent to the landlord on June 25, 2010. He also provided the Canada Post tracking number to confirm his mailing of this material to the landlord. I am satisfied that the tenant has served the application for dispute resolution to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to obtain a return of his security deposit from the landlord? Is the tenant entitled to recover his filing fee for this application from the landlord?

Background and Evidence

The tenant testified that he commenced a one-year fixed term tenancy for the rental premises on October 1, 2007. He said that this tenancy converted to a month-to-month tenancy after the expiration of one year. He testified that he paid a \$450.00 security deposit to the landlord on October 15, 2007.

The tenant gave sworn testimony that in early December 2009, he gave a note to the landlord's building manager indicating that he planned to end his tenancy by January 15, 2010. In that note, he included the forwarding address where the landlord could send his security deposit. He said that he vacated the rental premises on January 12,

2010, after cleaning and painting portions of the rental unit. He said that he participated in a joint condition inspection with the landlord's building manager at that time. He testified that he has tried to contact the landlord through the landlord's building manager to obtain a return of his security deposit but has been unsuccessful in obtaining any portion of that deposit. He testified that the landlord has not filed for dispute resolution to retain any portion of his security deposit. The tenant requested a monetary order for the return of his security deposit plus his filing fees 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 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) of the *Act*). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

With respect to the return of the security deposit, the triggering event is the provision by the tenant of the forwarding address or the end of the tenancy, whichever occurs later.

In this case, the undisputed evidence presented by the tenant is that the tenant provided written notice of his forwarding address well in advance of vacating the rental unit on January 12, 2010. The tenant testified that the landlord did not return the security deposit within 15 days of the end of the tenancy, nor did the landlord apply for dispute resolution to retain the tenant's security deposit.

Based on the undisputed testimony of the tenant, I find that the landlord contravened section 38 of the *Act* and is responsible for paying the tenant double the amount of his security deposit. Interest on the original amount of the security deposit is payable from

October 1, 2007 until the date of this decision. As the tenant has been successful in this application, I allow him to recover his \$50.00 filing fee for this application from the landlord.

Conclusion

I allow the tenant to recover double his security deposit (plus interest on the original amount of the security deposit) and his filing fee from the landlord. I issue a monetary Order in the following terms:

Item	Amount
Security Deposit plus interest (\$450.00 + \$8.47 = \$458.47)	\$458.47
Double Original Amount of Security Deposit for Landlord's Failure to Comply with Section 38 of the Act	450.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$958.47

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*.