



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the female tenant. The landlord did not attend.

The tenant provided testimony and evidence confirming she served the landlord with notice of this hearing on July 8, 2010 via registered mail. Section 90 of the *Residential Tenancy Act (Act)* deems documents served via mail to be received on the 5th day after mailing. I find the landlord has been served in accordance with the *Act* for the purposes of this hearing.

Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for all or part of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began on November 1, 2009 as a 6 month fixed term tenancy with a monthly rent amount of \$950.00 due on the 1st of the month and a security deposit of \$475.00 was paid. The tenancy ended on May 1, 2010.

The tenant testified that at the end of the tenancy the landlord moved into the rental unit. The tenant provided a copy of an email between herself and the landlord dated May 18, 2010 confirming the address for the landlord to return the security deposit.

The tenant included a copy of the landlord's response that indicates that he was deducting a total of \$136.00 for a number of items and a copy of a check from the landlord dated May 22, 2010 in the amount of \$339.00.

The tenant testified that she had not yet cashed the cheque. She further testified that she responded to the landlord with a registered letter on May 20, 2010 requested full return of the security deposit. While the tenant did not provide a copy of the letter she did provide confirmation of the registered mail and that it was successfully delivered.

Analysis

Section 38(1) of the *Act* requires that a landlord either return the security deposit, less any *mutually* agreed upon amounts, or file an Application for Dispute Resolution within 15 days of the end of the tenancy and receipt of the tenants' forwarding address.

Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit. As the tenant provided her email that confirms that she provided the forwarding address in writing on May 18, 2010, the landlord had until June 2, 2010 to return the entire security deposit or file an application to claim against the deposit.

I accept the landlord provided the tenants with a cheque in the amount of \$339.00 on May 22, 2010 but despite this payment, I accept the tenant's testimony that there was no mutual agreement for any of the landlord's stated deductions and as such the landlord was required to return the entire security deposit by June 2, 2010 and has therefore not complied with Section 38(1) of the *Act*.

Conclusion

I find that the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$950.00** comprised of double the amount of the security deposit. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As the tenants have in their possession a cheque from the landlord in the amount of \$339.00, I direct the tenants to cash this cheque and if the cheque clears the tenants must accept this in partial satisfaction of this compensation. Should the cheque fail to clear, the tenants may seek enforcement of the full order.

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 17, 2010.

Dispute Resolution Officer