



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on August 24, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absence.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of his security deposit?

Background and Evidence

This tenancy started on September 1, 2008, as a month to month tenancy. The tenancy ended May 31, 2010. Rent was \$1,800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$900.00 on August 15, 2008.

The Tenant said he moved out of the rental unit on May 31, 2010. He said he had scheduled a move out inspection with the Landlord for 9:00 a.m. June 1, 2010, but the Landlord did not show up for the meeting. The Tenant continued to say that the Landlord phone him later in the day and said that she was not going to return the security deposit and she offered no explanation for keeping the security deposit.

The Tenant said that he left a note in the rental unit with his forwarding address written on it and he confirmed that the Landlord received the note and his forwarding address by phone on June 1, 2010.

The Landlord has not made an application to the Residential Tenancy Branch and they did not attend the hearing on December 22, 2010.

The Tenants said he wants to apply for double the return of a security deposit as the Landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (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;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenant's testimony he did give the Landlord a forwarding address in writing on June 1, 2010. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and grant an order for double the security deposit of \$900.00 plus accrued interest of \$5.13 in the amount of $(\$905.13 \times 2) = \$1,810.26$.

As the Tenant has been successful in this matter, he is also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. The Tenant will receive a monetary order for \$1,860.26.



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Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 of the Act, I grant a Monetary Order for \$1,860.26 to the Tenant. The order must be served on the respondent and is enforceable through the Provincial Court 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*.
