



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD

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.

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 July 22, 2010. Canada Post receipts were provided in the Tenant's evidence.

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

Issues(s) to be Decided

1. Did the Landlord breach the *Residential Tenancy Act*?
2. If so, has the Tenant proven entitlement to a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective July 1, 2009 and set to switch to a month to month tenancy after June 30, 2010. Rent was payable on the first of each month in the amount of \$1,950.00. A move-in inspection report was completed July 2, 2009 and a move-out inspection report was completed June 30, 2010, and signed by both parties. The Tenant provided the Landlord with his forwarding address on June 30, 2010 when he wrote it on the move-out inspection form.

The Tenant testified that he served the Landlord with notice of application when he did not receive the return of his security deposit. He then received an envelope on August 16, 2010, which was put through the mail slot in his door, which included a cheque for the return of the initial security deposit without interest. After consulting with the staff at

the *Residential Tenancy Branch*, the Tenant wrote on the back of the cheque “not for full payment” and cashed the cheque. He is seeking the remainder of the amount due to him for doubling the security deposit.

The Landlord testified and confirmed she has not made an application for dispute resolution to keep the security deposit, she does not possess an Order authorizing her to retain the deposit, and she does not have the Tenant’s written permission to retain any portion of the security deposit. She stated that at the end of the tenancy she told the Tenant she would check with the city to determine if the utilities were paid and requested the Tenant’s permission to deduct the utilities from his security deposit but that he refused to allow her to make the deduction. She called the city and confirmed there was an outstanding water bill of \$222.00. She had plans to leave the country so she said she left instructions with her son and daughter to keep checking with the city and once the water bill was paid then they were instructed to mail out the cheque. When she returned from her vacation she found the envelope remained in her office and found the Tenant’s application for dispute resolution. She confirmed she mailed the Tenant a cheque in the amount of \$975.00 for the return of his deposit on Friday August 13, 2010.

Analysis

All of the testimony and documentary evidence was carefully considered.

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*. 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 Landlord testified that she issued the Tenant a cheque for the return of his security deposit and did not mail it until August 13, 2010. The evidence supports that the tenancy ended and the Tenant provided the Landlord with his forwarding address on June 30, 2010.

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 July 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 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 double the security deposit plus interest less the \$975.00 already received.

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

Doubled Balance owed on Security Deposit 2 x \$975.00	\$1,950.00
LESS: Amount received as partial payment August 16, 2010	-975.00
TOTAL AMOUNT DUE TO THE TENANT	\$975.00

While there may have been an outstanding utility bill to be paid by the Tenant, there is no provision under the Act that allows a landlord to singularly hold back payment of the security deposit while they wait to see if the utilities would be paid. The remedy provided under the Act in such cases is for the landlord to make their own application for dispute resolution, within the required time frames, requesting either a monetary order or to retain a portion of the security deposit as payment towards the outstanding debt.

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$975.00**. The order must be served on the respondent Landlord 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*.

Dated: December 09, 2010.

Dispute Resolution Officer