



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD O FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double her security and pet deposits, to recover the cost of the filing fee from the Landlord for this application, and to obtain an Order to have the Landlord return her personal possessions.

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 23, 2010. The Landlord confirmed receipt of the hearing package.

The parties appeared at the teleconference hearing, gave affirmed testimony, acknowledged receipt of evidence provided by the other, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Tenant proven entitlement to a Monetary Order as a result of that breach?
3. Does the Landlord have possession of the Tenant's golf clubs?

Background and Evidence

The parties entered into a written fixed term tenancy agreement effective June 1, 2010 which was set to switch to a month to month tenancy after June 1, 2011. Rent was payable on the first of each month in the amount of \$800.00 and a security deposit of \$400.00 plus a pet deposit of \$200.00 were paid on June 1, 2010.

The Tenant testified she received the keys to the rental unit on May 31, 2010. She paid the Landlord \$800.00 for June 1, 2010 rent plus the pet and security deposits. She moved one small truck load of her possessions into the unit on June 1, 2010 and on June 2, 2010 she informed the Landlord, via telephone, that this was not going to work out for her and she would be ending the tenancy and vacating the unit immediately. She returned the rental unit keys to the Landlord on June 2, 2010.

In her haste to vacate the unit the Tenant forgot her golf clubs inside the unit. She has requested the Landlord return her golf clubs on several occasions and the Landlord has still not returned them to her. The Tenant issued the Landlord a letter, which was personally served to the Landlord at her place of business on June 23, 2010, requesting access to the unit to retrieve her personal possessions, the return of her security and pet deposits, and provided the Landlord with her forwarding address in writing. The Landlord did not respond to the Tenant's letter.

The Landlord testified and confirmed she has not returned the security and pet deposit to the Tenant; she does not possess an Order issued by the *Residential Tenancy Branch* authorizing her to keep the deposits; she has not made an application for dispute resolution to keep the deposits; and she does not have the Tenant's permission in writing authorizing her to keep the deposits.

When asked about the location of the Tenant's golf clubs the Landlord first advised that she has not been back to the unit and therefore does not know where the golf clubs are. She then stated that it is the Tenants responsibility to retrieve them as she is too busy. When I questioned her about re-renting the rental unit the Landlord testified she has shown the unit and re-rented it as of July 15, 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* 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 Tenant bears the burden of proof.

The Landlord has confirmed that she did not apply for dispute resolution to keep the security and pet deposits, she does not have an Order allowing her to keep the security

and pet deposits, and she does not have the Tenant's written consent to retain the security and pet deposits.

The evidence supports that the tenancy ended on June 2, 2010, when the Tenant vacated the rental unit, as per section 44 (1)(d) of the Act. The Tenant provided the Landlord with her forwarding address on June 23, 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 and pet deposits, to the tenant with interest or make application for dispute resolution claiming against the security and pet deposits. In this case the Landlord was required to return the Tenant's security and pet deposits in full or file for dispute resolution no later than July 8, 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 and pet deposits. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security and pet deposit plus interest.

A significant factor in my considerations is the credibility of the Landlord's testimony surrounding the Tenant's golf clubs. I am required to consider the Landlord's evidence not on the basis of whether her testimony "carried the conviction of the truth", but rather to assess her evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. The Landlord contradicted her own testimony by first stating she has not returned to the rental unit since the Tenant vacated it and then later stated she showed the unit to prospective tenants and has since re-rented the unit as of July 15, 2010. Based on the aforementioned I do not accept the Landlord's testimony that she does not know the whereabouts of the Tenant's golf clubs and I hereby Order the Landlord to have the golf clubs at her place of business and available for the Tenant to retrieve them no later than Thursday, December 16, 2010 at 3:00 p.m.

I find that the Tenant has succeeded with her application therefore I award recovery of the \$50.00 filing fee.

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

Double Security Deposit 2 x \$400.00	\$800.00
Interest owed on the Security and Pet Deposits	0.00
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$1,250.00

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 **\$1,250.00**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the Landlord to comply with my Orders as listed above and to comply with the *Residential Tenancy Act*.

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 14, 2010.

Dispute Resolution Officer