



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD 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 deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord at his residence in the presence of a witness on July 29, 2010 in the mid afternoon.

The Tenant appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one appeared at the teleconference hearing despite the Landlord being served notice of the hearing in accordance with the *Act*.

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 claim as a result of that breach?

Background and Evidence

The Tenant testified she entered into a written tenancy agreement with the Landlord for a month to month tenancy effective April 1, 2010. Rent was payable on the first of each month in the amount of \$1,100.00 and she paid the Landlord \$500.00 on March 12, 2010 for the security deposit.

She stated that after conducting the move-in inspection she determined the rental property was not suitable for her. She provided written notice to the Landlord on approximately March 23, 2010 where she advised she would not be taking the unit and provided the Landlord with her forwarding address to return her security deposit. She

served the Landlord with this letter and returned the keys when she left these two items with the Landlord's adult son who resided with the Landlord.

She has contacted the Landlord on a couple of occasions since and has also had her ex-partner speak to the Landlord about the return of her deposit at which point he advised them he would not be returning the deposit. Her girlfriend lives across the street from the rental property so she knows the rental unit has been occupied since April 1, 2010.

The Tenant confirmed she has never been served with notice of a hearing based on a landlord's application for dispute resolution; nor has she provided the Landlord with written permission to keep her deposit.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her evidence.

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 evidence supports that the Tenant ended the tenancy March 23, 2010 and provided the Landlord with her forwarding address that same day.

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 April 7, 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 her claim for the return of double her security deposit plus interest.

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 the Security Deposit 2 x \$500.00	\$1,000.00
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$1,050.00

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$1,050.00**. 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 21, 2010.

Dispute Resolution Officer