



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This was an application by the tenant for a monetary order. The hearing was conducted by conference call. The tenant called in and participated in the hearing as did the landlord's son who acted as the landlord's agent. The respondent, K.S. did not attend the hearing. I was told that he acted as the landlord's rental agent with respect to this tenancy.

Issue(s) to be Decided

Is the tenant entitled to a monetary order including an order for payment of double the amount of her security deposit?

Background and Evidence

The applicant did not provide any documents in support of her claim, but the evidence presented at the hearing established that the tenancy began on December 15, 2006 and the tenant paid a \$675.00 security deposit to the landlord on or about December 1, 2006.

The landlord sold the rental unit and gave the tenant a two month Notice to End Tenancy for landlord's use that required the tenant to move out on April 15, 2010. The tenant moved out at the landlord's request on April 14, 2010. There was no condition inspection performed at the end of the tenancy.

The landlord's representative acknowledged that the tenant paid a security deposit of \$675.00 and he acknowledged that the landlord received a written document from the tenant that provided her forwarding address and requested the return of her security deposit.

The landlord's representative testified that the landlord did not return the security deposit because the tenancy agreement required the tenant to repaint the rental unit at the end of the tenancy. The landlord did not provide any document to support her position. At the hearing the landlord's representative quoted from what he referred to as an "addendum" to the tenancy agreement. The provision that he quoted to me was not part of a tenancy agreement, but was an excerpt from an addendum to the contract of purchase and sale of the rental unit that obliged the landlord as seller to re-paint the rental unit before the completion date of the sale.

The landlord's representative acknowledged that the landlord did not return the tenant security deposit within 15 days of receiving her forwarding address and file an application for dispute resolution to claim the deposit.

Analysis and Conclusion

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an Order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this



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provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided the landlord with her forwarding address in writing, and based upon the acknowledgement of the landlord's representative at the hearing I find that she served the landlord with documents notifying the landlord of this application as required by the *Act*. The tenant has not provided evidence to show that she served the landlord's agent with this application and the claim against him is dismissed without leave to reapply.

The tenant's security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$1,370.71. This includes interest on the original deposit amount. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,420.71 and I grant the tenant a monetary order against the landlord only in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Dated: January 10, 2011.
