



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 her security deposit, doubled, and to recover the filing fee.

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

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38 and 67 of the *Residential Tenancy Act* (the "Act") and to recover the filing fee?

Background and Evidence

I heard testimony that this tenancy ended on October 24, 2010 when the Tenant moved out of the rental unit, and a security deposit of \$350.00 was paid by the Tenant on May 15, 2007, and another \$50.00 was added on March 1, 2010.

The Tenant gave affirmed testimony that she provided the Landlord her written forwarding address on October 27, 2010. The Tenant testified that as of the date of her original application, November 22, 2010, the Landlord had not returned her security deposit; however, the Tenant testified that she received a refund of \$400.00, plus interest of \$8.62 in December 2010.

The Landlord has not filed for Dispute Resolution, but did provide evidence of his payment in the amount of \$408.62. I note the cheque was dated November 29, 2010.

The Landlord did not dispute that he received the Tenant's written forwarding on October 27, 2010.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant bears the burden 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.

The evidence and testimony and affirmation of the Landlord supports that the Tenant, at the end of the tenancy, provided the Landlord with her written forwarding address on October 27, 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. [Emphasis added]

The Landlord did not apply for dispute resolution to keep all or part of the security deposit, does not have an Order allowing him to keep the security deposit, and does not have the Tenant's written consent to retain the security deposit.

Based on the above, I find that the Landlord 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. [Emphasis added]

Conclusion

I find that the Tenant is entitled to a monetary order as follows:

Security Deposit owed, doubled (2 x \$400.00)	\$800.00
Less amount paid to Tenant	(\$408.62)
TOTAL AMOUNT DUE TO THE TENANT	\$441.38

Pursuant to the policy guideline, I have provided the Tenant with a **monetary order** in the amount of **\$441.38**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court should the Landlord fail to comply with this Order

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: April 05, 2011.

Residential Tenancy Branch