



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

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on December 10, 2010, the Landlord did not appear. The Tenant's agent supplied a copy of the registered mail receipt with tracking number into evidence and I was satisfied that the Landlord was served in accordance with Section 89 (1) (c) of the Residential Tenancy Act (the "Act").

The Tenant's Agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

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

Background and Evidence

The Tenant supplied into evidence a previous Decision issued by the Residential Tenancy Branch, dated November 9, 2010, which was in reference to the Tenant's earlier application for the return of his security deposit, doubled.

This Decision dismissed the Tenant's claim with leave to re-apply due to the fact the Tenant had failed to provide a written forwarding address in compliance with section 38 (1) of the Act. The Decision went on to state that the Decision was considered to be the Landlord's notification of the Tenant's written forwarding address and directed the Landlord to either return the Tenant's security deposit or file an application with 15 days of the Decision date, November 9, 2010.

The Tenant's agent testified that the Tenant has neither received the security deposit nor received notification that the Landlord had filed an application for Dispute Resolution.

Analysis

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

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 supports that the Landlord was directed to return the Tenant's security deposit or file an application for dispute resolution within 15 days of the November 9, 2010, by a previous Residential Tenancy Branch Decision.

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 November 24, 2010.

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.

Conclusion

I find that the Tenant has established a monetary claim as follows:

Security Deposit owed, Doubled (2 x \$200.00)	\$400.00
Filing fee	<u>\$50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$450.00

I have provided the Tenant with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) and enforced 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: April 14, 2011.

Residential Tenancy Branch