

DECISION

Dispute Codes: MNSD and O

Introduction

Application was made by the tenant on February 18, 2011 seeking return of her security deposit and the difference between actual gas usage and the equalized billing for the last several months of the tenancy.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for the security deposit and return of a portion of the gas payments.

Background and Evidence

This tenancy began on March 1, 2009 and ended on October 1, 2010. Rent was \$900 per month and the landlord holds a security deposit of \$450 paid on March 1, 2009.

During the hearing, the parties gave evidence that the tenant had not given one month written notice to end the tenancy but had, in fact, sub-let the rental unit. The landlord said she had done so without his knowledge or consent but the tenant stated that the landlord had completed documents for the income assistance program for the new tenant.

The landlord stated that the new tenant had told him that she had paid her security deposit to the applicant tenant who stated that was not the case.

The tenant has provided some, but not all of the receipts showing that she had paid the equalized billing rate of \$260 for gas. She stated that when equalized billings were reconciled for the first year of the tenancy, she received a refund from the landlord for nearly the equivalent of one month's rent. She stated the landlord had returned nothing for the last several months of the tenancy.

The parties concurred that the tenant had not provided the landlord with her forwarding address in writing.

Analysis

Section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, the landlord must return the security deposit or make application for dispute resolution to claim upon it.

Section 38(6) of the *Act* states that a landlord who does not comply with section 38(1) "must pay the tenant double the amount of the security deposit..."

An order to return the security deposit in double is a relatively severe remedy and one that requires a substantial degree of proof. In this matter, given that the tenant did not provide an address to which the security deposit should be returned, I have confirmed with the landlord that he now has the forwarding address by virtue of the tenant's application. He must now treat the security deposit in compliance with section 38 of the *Act* and make application to claim on it or return it with 15 days of the date of this decision.

As I do not have sufficient documentation to determine the difference between actual gas use and the equalized payments, I cannot make a finding on any amount that may be owed by the landlord to the tenant.

Conclusion

This application is dismissed with leave to reapply and the parties have been advised on the application of section 38 of the *Act* with respect to disposition of the security deposit and the issue of evidence with respect to reconciliation of payments for gas usage.

June 6, 2011