



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC 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*, sent via registered mail on February 17, 2011. The Tenant provided a copy of the Canada Post tracking confirmation in her evidence which confirms the hearing documents were signed received on February 18, 2011.

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

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified she entered into a verbal tenancy agreement with the Landlord and began paying rent as of February 15, 2009. Rent began at \$550.00 per month and was later reduced to \$525.00 per month effective approximately March 2010. The Tenant paid a security deposit of \$275.00 on February 14, 2009 as supported by the copy of the receipt provided in her evidence.

The Tenant advised that he vacated the property in December 2010 and had paid her rent in full until December 31, 2010. She sent the Landlord a registered letter on January 11, 2011 requesting the return of her security deposit to her new forwarding

address as noted in the letter. The Tenant reference the copy of the letter and Canada Post tracking receipt. She confirmed there had been a typing error in the date of the letter as she mistakenly recorded the year as 2010 instead of January 10, 2011.

As of today's date her security deposit has not been returned and she has not received any further communication from the Landlord.

Analysis

All of the testimony and documentary evidence was carefully considered.

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 the tenancy ended December 31, 2010 and the Tenant provided the Landlord with her forwarding address on January 10, 2011 via registered mail, which was signed for by the Landlord on January 13, 2011.

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 no later than January 28, 2011. The Landlord did neither.

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.

Based on the aforementioned, I find 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 the security deposit plus interest in the amount of **\$550.00** (2 x \$275.00 + 0.00 of interest).

The Tenant has succeeded with her application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order for **\$600.00** (\$550.00 + 50.00). 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: June 03, 2011.

Residential Tenancy Branch