



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double his security deposit.

Service of the hearing documents, by the Tenant to each Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on February 23, 2011. Canada Post tracking receipts were provided in the Tenant's testimony. The Landlords are deemed to have received the hearing documents on February 28, 2011, five days after they were mailed in accordance with section 90 of the *Act*.

The Tenants appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Landlords despite them being served notice of today's hearing in accordance with the *Act*.

Issues(s) to be Decided

1. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

The Tenants testified that they entered into a written month to month tenancy agreement that began on June 1, 2008 and ended January 31, 2011, after they provided proper written notice on December 7, 2010. Rent was payable on the first of each month in the amount of \$750.00 and on May 1, 2008 they paid \$400.00 as the security deposit. No move in inspection was completed however a move out inspection was completed by the resident manager on approximately January 20, 2011, and they were told everything was fine.

They have contacted the Landlord approximately three times in attempts to have their security deposit returned. Initially they were told the cheque was in the mail and then they were basically told that no money would be returned.

Their forwarding address was provided to the resident manager during the move out inspection on January 20, 2011. They had requested a copy of the move out inspection form however the Landlord has never sent them one.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included a copy of the Tenants' written notice to end their tenancy as well as a copy of their written statement.

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 that the Tenants provided the Landlord with their forwarding address on January 20, 2011, when they attended the move out inspection. The tenancy ended on January 31, 2011 in accordance with section 44 (1) of the *Act*.

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 Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than February 4, 2011. The Landlords did neither.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are 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 that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve his claim for the return of double the security deposit plus interest.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Double the security deposit (2 x \$400.00)	\$800.00
Interest owed on the Security Deposit of \$400.00 from May 1, 2008 to June 9, 2011	4.02
TOTAL AMOUNT DUE TO THE TENANT	\$804.02

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$804.02**. The Order must be served on the respondent Landlords 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 09, 2011.

Residential Tenancy Branch