



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 the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 4, 2011. Canada Post receipts were provided in the Tenant's evidence. The Landlord is deemed to have received the hearing documents on March 9, 2011, five days after they were mailed in accordance with section 90 of the *Act*.

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

Issues(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*?
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 parties entered into a fixed term tenancy agreement that began on June 1, 2010 and was set to switch to a month to month tenancy after June 1, 2011. The Tenant was allowed to move into the rental property on May 14, 2010 and ended the tenancy as of December 31, 2010. Rent was payable on the first of each month in the amount of \$980.00 and on May 3, 2010 the Tenant paid \$490.00 as the security deposit. The Tenant attended the move in inspection on May 3, 2010 and the move out inspection on December 14, 2010.

The Tenant first provided his forwarding address when he listed it on the move out inspection form on December 14, 2010 and then again via e-mail to the resident manager on December 27, 2010.

The Tenant clarified his application and stated he was seeking double the return of his security deposit as provided under the Act.

Analysis

I have carefully considered the aforementioned and the Tenant's evidence which included among other things, Canada Post receipts, the tenancy agreement, the move in and move out inspection report, and copies of various e-mails between the Tenant and resident manager.

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 tenancy ended December 31, 2010 and the Tenant provided the Landlord with his forwarding address on the move out inspection report on December 14, 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. In this case the Landlord was required to return the Tenant's security deposit or file for dispute resolution no later than January 15, 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 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 (2 x \$490.00) plus interest of \$0.00 for a total amount of **\$980.00**.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$980.00**. 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 13, 2011.

Residential Tenancy Branch