



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC

Preliminary Issue

After reviewing the Tenant's application for dispute resolution, at the onset of the hearing, the Tenant confirmed she wished to amend her application to request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement for the return of rent paid.

The Tenant had indicated this request in the notes written in the details of the dispute; therefore the Landlord was made aware of the Tenant's request in the initial application and would not be prejudiced by the Tenant's request to amend the application. Based on the aforementioned I approve the Tenant's request to amend the application to include the request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain a Monetary Order for the return of her security deposit and for damage or loss under the Act, regulation or tenancy agreement for the return of rent paid.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord at the Landlord's father's residence, in the presence of a witness on March 11, 2011. Based on the Tenant's testimony I accept the Landlord was served the dispute resolution package in accordance with the Act.

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 her being served notice of today's hearing in accordance with the Act.

Issue(s) to be Decided

1. Has the Landlord 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 Tenant testified she entered into a tenancy agreement with the Landlord during the month of August 2010. A payment was issued to the Landlord for the security deposit from Income Assistance in the amount of \$200.00 during the payment month of August 2010. Then rent was issued directly to the Landlord from income assistance in the amount of \$400.00.

The Tenant advised the Landlord told her she was moving and arranged for the Tenant to meet the Landlord's parents and to become their Tenant. The Tenant vacated the rental unit at the end of November 2010 and moved into the Landlord's parent's rental unit. The Landlord kept the payment issued by Income Assistance for the month of December 2010 and kept her \$200.00 security deposit. When the Landlord failed to return these monies the Tenant issued the Landlord a written request on February 19, 2011 for the money to be returned to her at her forwarding address which is the Landlord's father's house. The Landlord still retains this money and refuses to return it.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, copies of payments issued to the Landlord from Income Assistance, a statement written by the Landlord's father who is the Tenant's current landlord, and a written statement by the Tenant.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her documentary evidence.

The evidence supports the tenancy ended November 30, 2010 and the Landlord was provided the Tenant's forwarding address, in writing February 19, 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 in full or file for dispute resolution no later than March 6, 2011. The Landlord has done 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 and pet 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 **\$400.00** (2 x \$200.00 + interest of \$0.00).

The evidence further confirms the Landlord was paid \$400.00 from Income Assistance for December 2010, a period when the Tenant no longer resided at the rental unit. In the absence of evidence to prove the Landlord returned these funds, I find in favour of the Tenant and award her the return of the December 2010 rent payment of **\$400.00**.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$800.00** (\$400.00 + \$400.00). This Order must be served upon the Respondent Landlord and may be filed with Provincial Court 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: June 22, 2011.

Residential Tenancy Branch