



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double her security deposit plus 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 April 5, 2011. Mail receipt numbers were provided in the Tenant's evidence. The Landlord is deemed to be served the hearing documents on April 10, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Tenant appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, 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 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 written month to month tenancy agreement that began on May 15, 2009 and ended November 30, 2010. Rent was payable on the first of each month in the amount of \$550.00 and on or before May 15, 2009 she paid \$275.00 as the security deposit.

She provided her forwarding address on November 30, 2010, which was her father's address. Then when she relocated to another city she sent the Landlord a registered letter on March 14, 2011 informing her that her forwarding address had changed and requested her security deposit again.

After she filed her application for dispute resolution a letter was sent to her father's address, the first forwarding address she provided the Landlord, which included a partial payment of \$215.00 in a cheque dated April 15, 2011. This was forwarded to her by her father and she refused to cash the payment because it was not the right amount. She confirmed that she never agreed the Landlord could keep any portion of her deposit and to her knowledge the Landlord has never applied to keep it.

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 November 30, 2010, and the Tenant provided the Landlord with her forwarding address initially on November 30, 2010 and again with her new address on March 14, 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 December 15, 2010. 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 and pet 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 her claim for the return of double her security deposit plus interest in the amount of **\$550.00**.

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

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$600.00**. The Order is legally binding and must be served on the respondent Landlord.

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 27, 2011.

Residential Tenancy Branch

