



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 for a Monetary Order for the return of double his 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 March 29, 2011. The Canada Post Tracking number (xxxxxxx) was provided in the Tenant's testimony. The Landlord is deemed to have been served the hearing documents on April 3, 2011 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 him 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 pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified he and a co-tenant entered into a written tenancy agreement that began October 1, 2010 and was set to switch to a month to month tenancy after March 31, 2011. Rent was payable on the first of each month in the amount of \$975.00. Each co-tenant paid the Landlord \$250.00 towards the \$500.00 security deposit on September 24, 2011. A move in inspection was completed however no move out inspection or form were completed.

The Tenant advised that approximately two months into the tenancy his co-tenant moved out of the country and the Landlord returned his \$250.00 security deposit to him. A new person moved into the unit and to the best of the Tenant's knowledge this new person was added to the tenancy agreement and paid the Landlord his share of the security deposit in the amount of \$250.00.

The Tenant stated that when the Landlord informed him that he could not allow his girlfriend to stay over he provided the Landlord written notice on January 24, 2011 to end his tenancy effective February 24, 2011. This written notice included the Tenant's forwarding address and rent was paid in full for the month of February 24, 2011. The Tenant vacated the property on February 24, 2011.

After vacating the rental unit the Tenant stated the Landlord mailed him a letter to his forwarding address dated March 1, 2011 which stated he would not be returning the Tenant's security deposit.

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 Tenant provided the Landlord with his forwarding address January 24, 2011 and the tenancy ended February 24, 2011 pursuant to section 44(1)(d) 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 Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than March 11, 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 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 his claim for the return of double his security deposit plus interest in the amount of **\$500.00** (2 x \$250.00 + \$0.00 interest).

The Tenant has succeeded with his 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 **\$550.00** (\$500.00 + \$50.00). This Order is legally binding and must be served upon the 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: July 14, 2011.

Residential Tenancy Branch