



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF O

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, for other reasons, and to recover the cost of the filing fee from the Landlords for this application.

The parties 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.

Issue(s) to be Decided

1. Has the security deposit been managed by the Landlords in accordance with the *Residential Tenancy Act*?
2. If not, has the Tenant met the burden of proof to obtain a Monetary Order for the return of double her security deposit pursuant to section 38 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed verbal testimony that the parties entered into a written month to month tenancy agreement that began on February 1, 2011. Rent was payable on or before the first of each month in the amount of \$1,350.00. The Tenant paid \$675.00 on February 1, 2011 as the security deposit. No move in or move out inspection reports were completed.

The Tenant vacated the property prior to April 15, 2011 and although the keys were available on April 15, 2011 the Landlords were not available for their return until April 18, 2011.

The Landlord testified he received the Tenant's forwarding address in writing on April 5, 2011 delivered in person from the Tenant's agent. The Landlords have not returned the Tenant's security deposit, they do not have the Tenant's written permission for them to

retain the deposit, have not made application for dispute resolution to keep the security deposit and do not possess an Order issued by the *Residential Tenancy Branch* authorizing them to retain the security deposit.

Neither party had anything further to add to their written statements

Analysis

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*. 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.

In her written statement the Tenant acknowledges responsibility for the \$100.00 move out fee and a \$17.50 NSF charge and deducted these two amounts off of her security deposit claim (\$675.00 – 100.00 – 17.50) leaving a total claimed of \$557.50 security deposit plus \$675.00 for doubling the deposit.

The Landlords have admitted that they did not apply for dispute resolution to keep the security deposit, do not have an Order allowing them to keep security deposit and do not have the Tenant's written permission to retain the deposit.

The evidence supports that the Tenant provided the Landlords with her forwarding address on April 5, 2011 and the tenancy ended on April 15, 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 Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than April 30, 2011; they 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 her claim in the amount of **\$1,232.50** (\$675.00 – 100.00 – 17.50 + 675.00) plus interest of \$0.00.

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

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$1,282.50** (\$1,232.50 + 50.00). This Order is legally binding and must be served upon the Respondent Landlords.

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: August 31, 2011.

Residential Tenancy Branch