



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 his security deposit, doubled.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form.

Preliminary Issue:

The landlord was served the tenant's application and hearing package via registered mail, on April 28, 2011, to the landlord's address at which she carries on business as a landlord, as I confirmed with the landlord. The tenant provided a copy of the registered mail receipt.

However, the mail went unclaimed. The landlord had received a copy of the tenant's evidence, which is the reason she knew to be in attendance.

However, I find the tenant successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act").

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act* (the "Act")?

Background and Evidence

This tenancy began on November 1, 2006, and ended on March 31, 2011, monthly rent began at \$875.00, monthly rent at the end of the tenancy was \$928.80, and a security deposit of \$437.50 was paid on November 1, 2006.

The tenant gave affirmed testimony and supplied evidence that the landlord was provided the tenant's written forwarding address in a letter on March 29, 2011, and further provided the landlord two more notices of the forwarding address, in an email response to the landlord's inquiry.

The tenant stated that the landlord has not returned her security deposit and is seeking \$875.00 in monetary compensation, which is her security deposit, doubled.

The landlord acknowledged receiving the tenant's written forwarding address on March 29, 2011, that she has not filed for Dispute Resolution, or had the tenant's written permission to withhold any amount.

Further, the landlord acknowledged that she had not returned the tenant's security deposit.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In order to justify payment of loss under section 67 of the *Act*, the applicant/tenant bears the burden 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.

The evidence and testimony supports that the tenant provided the landlord with her written forwarding address on March 31, 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. [Emphasis added]

The failure to comply with this section entitles the tenant to be reimbursed double her security deposit.

The landlord did not apply for dispute resolution to keep all or part of the security deposit, does not have an Order allowing her to keep the security deposit, and does not have the tenant's written consent to retain the security deposit.

Based on the above, I find that the tenant has established a monetary claim as follows:

Security Deposit owed, doubled (2 x \$437.50)	\$875.00
Interest on Security Deposit of \$437.50	\$13.61
Filing fee	\$50.00
TOTAL AMOUNT DUE TO THE TENANT	\$938.61

Pursuant to section 67 of the Act, I grant the tenant a **monetary order** in the amount of **\$938.61**.

I am enclosing a Monetary Order for **\$938.61** with the tenant's Decision. This Order is a **legally binding, final Order**, and it may be filed in the Provincial Court (Small Claims) for enforcement should the landlord fail to comply with this monetary order.

Conclusion

The tenant is granted a monetary order for \$938.61.

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 15, 2011.

Residential Tenancy Branch