



Dispute Resolution Services

Page: 1

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.

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

Issues(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act* in her management of the Tenant's security deposit pursuant to section 38 of the *Residential Tenancy Act*?
2. If so, has the Tenant met the burden of proof to be awarded a monetary order as a result of that breach pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement that began on November 1, 2010 and was set to end March 31, 2011 for the combined rent of \$4,500.00. The parties agreed to an extension of the tenancy from April 1, 2011 to April 18, 2011 for rent of \$600.00. The Tenant paid \$1,000.00 as the security deposit on October 16, 2010. No move in inspection report was completed and no move out inspection report was completed. The Landlord has withheld the \$1,000.00 security deposit.

The Tenant affirmed that she vacated the property April 18, 2011 and the Landlord has refused to return her security deposit. She provided the Landlord with her forwarding address via Canada Post Xpress post on May 26, 2011 and confirmed that was her address on the Xpress post in an email to the Landlord May 31, 2011.

The Landlord affirmed she has not returned the security deposit, she does not possess an Order from the *Residential Tenancy Branch* granting her authority to keep the security deposit, she does not have the Tenant's written permission to keep the security deposit, and she did not file an application for dispute resolution until September 27, 2011.

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* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The evidence supports the tenancy ended April 18, 2011 and the Landlord was sent the Tenant's forwarding address via Canada Post May 26, 2011. The Landlord is deemed to have received the Tenant's forwarding address May 31, 2011, five days after it was mailed, pursuant to Section 90 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 June 15, 2011. The Landlord did not file her application for dispute resolution until September 27, 2011.

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 **\$2,000.00** (2 x \$1,000.00 plus interest of \$0.00).

The Tenant has been successful with her application, therefore in accordance with section 72 of the *Act*, I award the Tenant recovery of the **\$50.00** filing fee.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$2,050.00**. This Order is legally binding and must be served upon 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: September 30, 2011.

Residential Tenancy Branch