



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 the security deposit and to recover the filing fee.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on July 31, 2011. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing and the hearing proceeded in the landlords' absence.

Both parties were provided the opportunity to present evidence and make submissions. As the landlord did not appear the submissions were made by the tenants agent. On the basis of the evidence presented at the hearing, a decision has been reached.

Issue(s) to be Decided

- Is the tenant entitled to recover double the security deposit?

Background and Evidence

The tenancy agreement provided by the tenant shows that this tenancy started on August 01, 2010. This was a fixed term tenancy due to expire on January 31, 2011 with the option of continuing on a month to month basis. Rent for this unit was \$650.00 per

month and payable on the first of each month in advance. The tenant paid a security deposit of \$325.00 on July 30, 2010.

The tenant's agent testifies the tenant gave notice to end her tenancy in December 30, 2010 effective on January 31, 2011. The tenant's agent testifies the tenant provided the landlord with her forwarding address in writing on February 09, 2011 after the move out inspection was completed with the landlord.

The tenant's agent testifies that the landlord did not provide the tenant with a copy of the move out inspection report at that time as the manager's printer had run out of ink. The tenant was asked to return a week later to pick up the report. The tenant's agent testifies that when the tenant returned to the manager to collect the report a new manager was in place and told the tenant the report was missing from her file.

The tenant's agent testifies the landlord has failed to return the security deposit within 15 days of receiving the tenants forwarding address in writing and therefore the tenant seeks to recover double her security deposit to the sum of \$650.00.

The tenant also seeks to recover her \$50.00 filing fee from the landlord.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

I further find that Sections 35(3) and 35(5) of the *Act* require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to provide the tenant with a copy of the condition inspection report, I find the landlord contravened s. 35(4) of the *Act*. Consequently, s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

Based on the above and the undisputed evidence presented I find that the landlord did receive the tenants forwarding address in writing on February 09, 2011. As a result, the landlord had until, February 24, 2011 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and has not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenant has established a claim for the return of the security deposit of \$325.00 and pursuant to section 38(6)(b) this deposit will be doubled to the sum of **\$650.00**.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order as follows:

Double the security deposit	\$650.00
Plus filing fee	\$50.00
Total amount due to the tenants	\$700.00

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$700.00**. The order must be served on

the Respondent and is enforceable through the Provincial Court as an order of that Court.

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: October 26, 2011.

Residential Tenancy Branch