



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD OLC

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 and to Order the Landlords to comply with the *Residential Tenancy Act*.

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. Have the Landlords disbursed the Tenant's security deposit in accordance with the *Residential Tenancy Act*?
2. If not, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

The parties agreed that they entered into a written month to month tenancy agreement that began on September 19, 2009 and ended July 1, 2011. Rent was payable on the first of each month in the amount of \$800.00 and on September 19, 2009 the Tenant paid \$400.00 as the security deposit. No formal move in or move out inspection reports were completed in writing.

The parties confirmed that the Landlords understood that the Tenant was moving to another location in the same rural community and that her forwarding mailing address would remain the same. They also agreed that they entered into a verbal agreement at the end of the tenancy that the Tenant would be responsible for the cost to steam clean the carpets.

The Landlords sent the Tenant a partial security deposit refund of \$250.00 in a cheque dated July 24, 2011 which was received by the Tenant on August 4, 2011; and a

second refund cheque dated October 26, 2011 in the amount of \$118.65 was received by the Tenant on November 8, 2011. The Tenant has not yet cashed the cheque for \$118.65.

The Landlords confirmed they have not made application for dispute resolution to retain the security deposit, do not possess an Order issued by the *Residential Tenancy Branch* authorizing them to retain any portion of the security deposit, and do not have the Tenant's written permission to retain any portion of the security deposit.

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.

The evidence supports the Landlords have not applied for dispute resolution to keep the security deposit, do not have an Order allowing them to keep any portion of the deposit, and they do not have the Tenant's written consent to retain any portion of the security deposit. The parties have agreed that the Tenant accepted responsibility for the costs to clean the carpets. The Landlord's evidence included the receipt for the carpet cleaner dated July 20, 2011 for the amount of \$31.35 (\$41.35 less \$10.00 refundable deposit).

Therefore the amount of security deposit to be dealt with is **\$368.65** (\$400.00 plus interest of \$0.00 - \$31.35)

The evidence supports the Landlords knew the Tenant's forwarding address was the same as her current post office box number and that the tenancy ended July 1, 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, 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 **July 16, 2011**.

The Landlords have not made application for dispute resolution and have issued two payments to payments which were received by the Tenant as follows: \$250.00 received August 4, 2011 and \$118.65 received November 8, 2011.

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 and pet deposit and the landlord must pay the tenant double the security deposit.

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 as follows:

As the Tenant has not yet cashed the second cheque there is no way to determine at this point if the cheque will clear the bank. Therefore I consider the \$118.65 not to have been paid at this point. If the Tenant cashes the cheque and it does clear the bank it will be considered payment towards the enclosed monetary order.

Monetary Order – I find the Tenant is entitled to a Monetary Order as follows:

Double security deposit (2 x \$368.65)	<u>\$737.30</u>
SUBTOTAL	\$737.30
LESS: Payment received & cashed	<u>-250.00</u>
Offset amount due to the Tenant	<u>\$487.30</u>

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$487.30**. The Order is legally binding and must be served on 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: November 09, 2011.

Residential Tenancy Branch