



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 to obtain a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on September 8, 2011. The Tenant provided Mail receipt numbers in her evidence along with a copy of the actual envelope which indicates the package was unclaimed. Refusal of registered mail does not negate service of documents as section 90 of the *Act* provides that if documents are served via registered mail they are deemed to have been received by the respondent five days after they were mailed. Based on the written submissions of the Tenant I find the Landlord was sufficiently served with notice of this proceeding.

The Tenant appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one appeared on behalf of the Landlord despite him being served notice of this hearing in accordance with the *Act*.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant affirmed that she entered into a written one year fixed term tenancy agreement with the Landlord that began on September 1, 2010. The parties mutually agreed to end the fixed term as of June 30, 2011 as long as the Tenant found a new tenant to occupy the unit. Rent was payable on the first of each month in the amount of \$825.00 and towards the end of August 2010 the Tenant paid \$412.50 as the security deposit. The Landlord conducted a move in inspection report however he did not attend

the unit at the end of the tenancy and did not complete a move out inspection with the Tenant.

The Tenant affirmed that she provided the rental unit keys to the replacement tenant on June 30, 2011. She later found out that the Landlord came to the unit after she had moved out to conduct a move in inspection with the new tenant.

The Tenant first provided her forwarding address to the Landlord in an e-mail dated July 18, 2011 and then again in a letter that was sent to the Landlord via registered mail on July 21, 2011. The Tenant provided evidence of the e-mail, a copy of the letter, and a copy of the registered mail envelope that was returned unclaimed by the Landlord.

Analysis

After consideration of the evidence before me, in the absence of any evidence from the landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her documentary evidence which included, among other things, copies of e-mails between the parties, copies of unclaimed registered mail addressed to the Landlord at the service address provided on the tenancy agreement, and a copy of the letter providing the Landlord the Tenant's forwarding address.

I accept the evidence that the tenancy ended June 30, 2011 by mutual agreement and that the Tenant provided the Landlord with her forwarding address in writing on July 21, 2011 which is deemed to be received by the Landlord on July 26, 2011 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 August 10, 2011. The Landlord did neither.

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

Based on the aforementioned, I find 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 the security deposit plus interest in the amount of **\$825.00** (2 x \$412.50 + \$0.00 interest).

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

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$875.00** (\$825.00 + 50.00). 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: November 23, 2011.

Residential Tenancy Branch