



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 his 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 October 19, 2011. Canada Post receipts were provided in the Tenant's evidence. Based on the submissions of the Tenant I find the Landlord was sufficiently served notice of this proceeding, in accordance with the *Act*.

The Tenant appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the Landlord despite them 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* or regulation?
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 he entered into a tenancy agreement that began April 1, 2011 and ended when he vacated July 10, 2011 as discussed in their previous dispute resolution hearing that took place July 5, 2011. Rent was payable on the first of each month in the amount of \$1,100.00 and the Tenant paid a total of \$550.00 as a security deposit with \$500.00 paid March 18, 2011 and the remaining \$50.00 paid April 1, 2011.

The Tenant stated he has provided his forwarding address in writing to the resident manager in early July 2011, again on July 10, 2011 and for a third time July 18, 2011.

He later provided his forwarding address in writing to the Landlord's head office when he requested return of his deposit from them and again when he served them notice of his application for dispute resolution and they still have not returned his deposit so he is double the amount.

Analysis

Given 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 their documentary evidence which included, among other things, Canada Post receipts, receipts dated March 18, 2011 for rent and security deposit, and a copy of the tenancy agreement.

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 July 10, 2011 and that the Tenant provided the Landlords with his forwarding address in writing on July 10, 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.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than July 25, 2011. They 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 and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish his claim and I award him double his security deposit plus interest in the amount of **\$1,100.00** (2 x \$550.00 + \$0.00 interest).

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

Conclusion

The Tenant's application will be accompanied by a Monetary Order in the amount of **\$1,150.00** (\$1,100.00 + \$50.00). This Order is legally binding and must be served upon the 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: January 05, 2012.

Residential Tenancy Branch