



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.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

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 sections 7 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The following facts were confirmed by each party during the teleconference hearing and were not in dispute:

- The parties entered into a fixed term tenancy agreement that began on October 1, 2011 and was scheduled to end on October 1, 2012; and
- Rent was payable on or before the first of each month in the amount of \$1,150.00; and
- On or before October 1, 2011 the Tenant paid \$500.00 as the security deposit; and
- No condition inspection report was completed at the onset of the tenancy; and
- The tenancy ended November 30, 2011 and both parties attended a condition inspection and signed the condition inspection form on November 30, 2011; and

- The Tenant provided a forwarding address to the Landlord on the move out condition inspection form on November 30, 2011; and
- The Landlord has not returned the security deposit to the Tenant.

The Landlord affirmed that he received the notice of hearing and stated that he did not receive a copy of the Tenant's application. He confirmed he has not returned the security deposit as he has lost rent due to this situation, he does not have an Order authorizing him to keep the deposit, and he has not made an application for dispute resolution to keep the deposit.

The Tenant affirmed she served the Landlord with a copy of her application and that the threatening voice message she received from the Landlord's friend shortly after serving the documents references the dollar amount she has claimed therefore proving the Landlord received a copy of the application. She confirmed her service address has changed since ending her tenancy and her current service address is the one listed on her application.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included among other things copies of registered mail receipts and the move out inspection report.

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. 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 Landlord confirmed that he has not returned the security deposit, he has not applied for dispute resolution to keep the security deposit, and he does not have an Order allowing him to keep the security deposit.

The evidence supports that the Tenant provided the Landlord with her forwarding address on November 30, 2011, the day the tenancy ended.

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 December 15, 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 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 **\$1,000.00** (2 x \$500.00 + \$0.00 interest).

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

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$1,050.00**. 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: April 27, 2012.

Residential Tenancy Branch