



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC MSD 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.

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 March 9, 2012. Mail receipt numbers were provided in the Tenant's evidence. Based on the submission of the Tenant I find the Landlord has been sufficiently served notice of this proceeding in accordance with the *Act*.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. No one appeared on behalf of the Landlord despite him being served notice of this proceeding 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 sections 7 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant affirmed that she entered into a verbal tenancy agreement with the respondent Landlord which was to begin on July 15, 2011 for the monthly rent of \$1,600.00. She paid a total of \$1,600.00 as the deposits as supported by her evidence which included copies of the June 13, 2011 and June 14, 2011 e-mail payment transfers and e-mails.

The Tenant advised she met with the Landlord on July 18, 2011, in the presence of three witnesses when she informed the Landlord she would not be moving into the

rental unit at which time she served the Landlord a letter indicating this and provided the Landlord with her forwarding address to send her deposits.

She is seeking the return of double her deposits as the Landlord still has not returned her \$1,600.00.

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 her documentary evidence which included, among other things, Canada Post receipts, e-mail money transfers, and e-mail correspondence between the parties.

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 Tenant ended the tenancy prior to moving into the unit and that the Tenant provided the Landlord with her forwarding address in writing on July 18, 2011 for the return of her deposit(s).

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 2, 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 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 her claim and I award her double her security and or pet deposits plus interest in the amount of **\$3,200.00** (2 x \$1,600.00 + \$0.00 interest).

The Tenant has succeeded with her 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 **\$3,250.00** (\$3,200.00 + \$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: May 10, 2012.

Residential Tenancy Branch