



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double her security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. 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. Have the Landlords 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 she entered into a fixed term tenancy agreement that began December 30, 2006 and switched to a month to month tenancy agreement after December 30, 2007. Rent was payable on the first of each month in the amount of \$715.00 and on or before December 30, 2006 the Tenant paid \$300.00 as the security deposit. No move in condition inspection report was done until the new Resident Manager came on board and completed the move in report on January 9, 2011. The move out condition report was completed February 22, 2012 at which time the Tenant provided her forwarding address to the Landlord.

The Tenant advised that after she gave her notice to end her tenancy she paid her full month's rent for February 2012 and the Landlord requested that she vacate the property by February 15, 2012 even though she paid her full rent. She agreed to vacate early and requested to hold onto the mail key for a few days which the Resident Manager agreed and gave her strict instructions not to return it to anyone else. She hired some

cleaners who worked in the unit for three days and then noticed that the Landlord entered the unit prior to the move out inspection and had paint cans inside the unit. She stated the Resident Manager started the dispute over not returning her security deposit over an argument about not removing a wall border.

The Tenant confirmed receiving a cheque from the Landlord March 16, 2012, after she filed her application for dispute resolution.

The Landlord's Agent stated that they were of the opinion that the tenancy did not end until the last day of the month as per section 7(c) of their tenancy agreement. They are also of the opinion that because they were not provided the Tenant's new postal code and because the address was provided at the move out inspection and written on the condition report that it was not provided to them in accordance with the Act. He stated the Landlord sent the refund cheque March 9, 2012.

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* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

Section 23 of the *Act* stipulates that a move in condition report must be completed on or before the day the tenant is entitled to possession of the rental unit and section 14 of the Regulation stipulates the rental unit must be empty at the time of the inspection. In this case the move in inspection was not conducted until several years after the start of the tenancy with the unit fully occupied.

Section 24(2) of the *Act* stipulates the right of a landlord to claim against a security deposit is extinguished if the landlord does not comply with section 23 of the *Act*.

The evidence supports the tenancy ended February 22, 2012, as per section 44(1)(d) of the *Act* that stipulates the tenancy ends when the Tenant vacates the property and the Landlord regains possession.

In this case I find the Landlord was sufficiently provided with the Tenant's forwarding address, despite the fact it did not include a postal code, as it was provided during the move out inspection and put to writing on the condition inspection report.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this

case, the Landlord has the burden to prove the date the security deposit was returned to the Tenant. Accordingly, the only evidence as to the date the deposit was returned was verbal testimony and I find the disputed verbal testimony insufficient to meet the Landlords' burden of proof.

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, the landlord must repay the security deposit, to the tenant with interest.

In this case the Landlords extinguished their right to claim against the deposit and were therefore required to return the Tenant's security deposit in full no later than March 8, 2012. The deposit was not returned until March 16, 2012.

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 met the burden of proof to establish her claim and I award her double her security deposit plus interest as follows:

Double Security Deposit (2 x \$300.00)	\$600.00
Interest on \$300.00 from December 30, 2006	<u>9.21</u>
SUBTOTAL	\$609.21
LESS: Payment received March 16, 2012	<u>-309.09</u>
TOTAL AMOUNT DUE THE TENANT	<u>\$300.12</u>

Conclusion

The Tenant's application will be accompanied by a Monetary Order in the amount of **\$300.12**. 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 15, 2012.

Residential Tenancy Branch