

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the Tenant for the return of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the notice of hearing and the submitted evidence packages, I am satisfied that both parties have been properly served with the notice and evidence.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy began on July 15, 2011 on a fixed term tenancy until March 14, 2012 and then thereafter on a month to month basis as shown by the signed tenancy agreement submitted by both parties. Both parties agreed that the Tenancy ended on March 15, 2012. The monthly rent was \$2,180.00 payable on the 15th of each month and a security deposit of \$1,090.00 was paid on July 5, 2011.

Both parties agreed that the Landlord was given the forwarding address in writing on April 16 or 17th, 2012.

The Tenant seeks a monetary order for \$2,000.00 consisting of the \$1,090.00 security deposit, \$10.00 for mailing and \$900.00 for the Tenant's time communicating with the Landlord over a 3 month period for the return of the security deposit. Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Tenant's claim for recovery of litigation costs (postage and time spent preparing) is dismissed.

The Landlord states that the \$1,090.00 security deposit was not returned to the Tenant because of damages to the rental. The Landlord has confirmed in his direct testimony that an application for dispute resolution has not been filed.

Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit,
and

**(b) must pay the tenant double the amount of the security deposit, pet
damage deposit, or both, as applicable.**

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

Based upon the evidence submitted by both parties, I find that the Landlord has failed to comply with Act by returning the security deposit within 15 days of the later of the end of tenancy and when the forwarding address in writing was given to the Landlord. The Landlord has extinguished his right against the security deposit and subject to section 38 (6) (b) and must pay the Tenant double the amount of the \$1,090.00 security deposit. The Tenant has established a claim for \$2,180.00. The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary order under section 67 for the balance due of \$2,230.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$2,230.00.

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: September 04, 2012.

Residential Tenancy Branch