

DECISION

Dispute Codes MNSD, FF

Introduction

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

The Tenant attended the hearing by conference call and gave undisputed testimony. The Landlord did not attend and did not submit any documentary evidence. The Tenant states that the Landlord was served with the notice of hearing and evidence package by Canada Post Registered Mail on September 13, 2012 and has submitted the Customer Receipt as confirmation. As such, I am satisfied that the Landlord was properly served with the notice of hearing and evidence package submitted.

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 Landlord's claim for recovery of litigation costs (postage) is dismissed.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for double the security deposit?

Background, Evidence and Analysis

This Tenancy began on June 1, 2009 on a fixed term tenancy ending on June 1, 2010 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. A \$700.00 security deposit was paid on March 30, 2009.

The Tenant seeks a monetary order for the return of double the security deposit of \$1,400.00. The Tenant states that 3 months notice to end the tenancy was given in December of 2011 to end on February 29, 2012. The Tenant states that the Tenancy ended on February 29, 2012 and that within a 1 week period "texted" the Landlord with the forwarding address. The Tenant states that the Landlord contacted verbally after this and was given multiple assurances that the security deposit would be forwarded. The Tenant states to date that the Landlord has failed to return the security deposit.

Section 38 (1) and (6) 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.

(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.

I find based upon the undisputed evidence submitted by the Tenants that the Landlord was provided with the forwarding address of the Tenant that followed with multiple verbal conversations of assurances that the security deposit would be returned. Pursuant to Section 38 (6) of the Act, I find that the Tenants have satisfied me that the Landlord failed to return the security deposit or apply for dispute resolution within 15 day of the end of tenancy and receiving the Tenant's forwarding address in writing. The Tenants have established a claim for \$1,400.00 and the recovery of the \$50.00 filing fee. The Tenant is granted a monetary order under section 67 for the balance due of \$1,450.00.

Conclusion

The Tenant is granted a monetary order for \$1,450.00.

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: November 28, 2012.

Residential Tenancy Branch

