



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC

Introduction

This hearing dealt with an application by the tenant for a monetary order for the amount of the security deposit and compensation under section 38. The application is also inclusive of an application for money owed or compensation for damage or loss under the Act, Regulation or Tenancy Agreement. Despite having been served with the application for dispute resolution and notice of hearing the landlord did not participate in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed facts before me, given under solemn affirmation are as follows.

The tenancy began as a verbal tenancy agreement on December 20, 2009. The landlord collected a security deposit of \$250 at the outset of the tenancy as well as \$500 for the first month's rent. The tenant did not occupy the rental unit on January 01, 2009 as the landlord determined he could not proceed to rent the unit to the tenant. The landlord returned the \$500 to the tenant, but has not returned the security deposit to him. As a result of the landlord's inability to advance the tenancy agreement, the tenant incurred storage charges for his belongings, for the period of one (1) month, in the amount of \$37.89.

On January 14, 2009, the landlord had received and was in possession of the tenant's forwarding address in writing and request for the return of the security deposit.

Section 38(1) of the Act provides as follows:

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

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Analysis

I find that the landlord failed to repay the security deposit or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of **\$250** and was obligated under section 38 to return this amount together with the **\$0.12** in interest which had accrued. The amount which is doubled is the **\$250** base amount of the deposit before interest. I find

the tenant's claim for storage fees in the amount of **\$37.89** to be an ancillary cost in these circumstances born out of the landlord's neglect or failure to comply with the Act; and, I find the claimant took reasonable steps to mitigate the loss beyond his claim, and is therefore entitled to a refund in this amount.

I find that the tenant has established a claim for **\$538.01**

Conclusion

I grant the tenant an order under section 67 for the sum of **\$538.01**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated April 14, 2009