

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on September 3, 2009. The Landlord is deemed to be served the hearing documents on September 8, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both Tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Landlord did not appear despite being served in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Are the Tenants entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The verbal month to month tenancy began on April 1, 2008 and ended when the Tenants vacated the rental unit on May 30, 2009. The monthly rent was payable on the first of each month in the amount of \$1,000.00 and the Tenants paid a security deposit of \$500.00 on April 1, 2008.

The female Tenant referred to their evidence in support of her testimony that they had provided the Landlord with their forwarding address, unofficially prior to their move out date, and then again officially via registered mail on July 7, 2009.

The female Tenant argued that they moved to a rental unit in the same building, one that is owned by a different landlord, and that this Landlord kept telling them that he would drop by with their security deposit and interest and then never showed up.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants 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. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenants bear the burden of proof.

Given the evidence and testimony 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 Tenants.

I find that the Tenants have proven that they provided the Landlord with written notification of their forwarding address in the letter sent registered mail to the Landlord on July 7, 2009, and that the Landlord is deemed to have received this letter July 12, 2009, five days after it was sent in accordance with section 90 of the *Act*.

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 or file for dispute resolution no later than July 27, 2009. Based on the evidence and testimony before me the Landlord has not filed an application for dispute resolution nor has he returned the Tenants' security deposit and interest.

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 amount of the security deposit. I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double their security deposit and interest.

I find that the Tenants have succeeded with her application and that they are entitled to recover the cost of the filing fee from the Landlord.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Doubled Security Deposit 2 x \$500.00	\$1,000.00
Interest owed on the Security Deposit of \$500.00 from April 1, 2008 to December 22, 2009	5.64
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANTS	\$1,055.64

Conclusion

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for \$1,055.64. The order must be served on the respondent Landlord and is enforceable through the Provincial Court as an order of that Court.

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: December 22, 2009.

Dispute Resolution Officer