

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenant's application for return of double the security deposit, compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard.

At the commencement of the hearing it was determined that the tenant had not received one page of the landlord's submission. The one page was not accepted as evidence; however, the landlord was provided the opportunity to verbally explain his position during the hearing

Issues(s) to be Decided

1. Has the tenant established an entitlement to double the security deposit?
2. Has the tenant established an entitlement to compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

I heard undisputed testimony that the parties had previously participated in a dispute resolution proceeding (file no. 743570). The previous dispute dealt with the tenant's request for compensation for termination of a service or facility, return of the security deposit and compensation with respect to issuance of a 2 Month Notice to End Tenancy. The Dispute Resolution Officer (DRO) that issued the decision under file no. 743570 awarded the tenant compensation for termination of a service or facility, found the request for the security deposit was premature, and dismissed the tenant's claim for compensation with respect to the 2 Month Notice to End Tenancy. The DRO gave the tenant a Monetary Order for the termination of a service or facility and leave to reapply

with respect to the security deposit only. The claim for compensation for the 2 Month Notice was dismissed without leave.

The tenant applied for a review hearing of the decision issued under file no. 743570 on the basis she had new and relevant information and that request for a review hearing was denied.

The tenant testified that she vacated the rental unit November 4, 2009 and gave the landlord her forwarding address in writing by way of a letter sent registered mail on October 18, 2009. The tenant acknowledged that she received a refund of the security deposit of \$975.00 on November 27, 2009 by way of a cheque dated November 25, 2009.

In making this application, the tenant is of the position that the security deposit refund was received more than 15 days after the tenancy ended and that she is entitled to receive double the security deposit. In making this application, the tenant is seeking to recover moving costs, legal costs, late payment costs and one month's compensation for the issuance of the 2 Month Notice. As evidence the tenant provided a copy of the 2 Month Notice she received, and receipts for moving, legal and late payment expenses.

In response to the tenant's application the landlord took the position that this dispute has already been dealt with by way of the previous hearing and that he promptly paid the tenant the amount of the Monetary Order after receiving the DRO's decision under file no. 743570. The landlord also paid the amount of the original security deposit back to the tenant upon receiving the decision. The landlord explained that he was of the belief he should wait for the decision before refunding the security deposit to the tenant since return of the security deposit was part of her previous application. The landlord also took the position that the tenant officially ended November 30, 2009 and he was not late in refunding the security deposit. As evidence for this hearing the landlord provided copies of the two cheques sent to the tenant. The cheques are dated November 25, 2009.

Analysis

Dispute resolution decisions are final and binding upon both parties. A final decision cannot be changed by filing another application against the same party with respect to the same issue unless leave to reapply is granted. Where a party makes an application for dispute resolution it is upon that party to include all of their losses and sufficient evidence to substantiate an entitlement to compensation in preparing that application. The tenant has previously made an application and a DRO has made a final decision with respect to the tenant's entitlement to compensation stemming from the issuance of a 2 Month Notice by the landlord. Although the tenant has included additional amounts and documentation with respect to compensation related to the issuance of a 2 Month Notice in making this application, I find the facts and situation presented with this application to be substantially the same as the facts that were before the previous DRO and this matter is now *res judicata*. Therefore, I refuse to give further consideration to the tenant's application with respect to compensation under section 51 of the Act, moving, legal or late payment expenses.

As the DRO that issued the previous decision under file 743570 granted the tenant leave to reapply with respect to return of the security deposit I will consider the merits of this portion of the tenant's application.

Section 38 of the Act provides for the return of security deposits. The landlord was required to comply with section 38(1) of the Act by either returning the security deposit and interest to the tenant or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to

pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

At issue in this case is when the tenancy ended. Section 44 provides for the ways a tenancy ends. Section 44 provides

44 (1) A tenancy ends only if one or more of the following applies:

(d) the tenant vacates or abandons the rental unit;

I find that by virtue of section 44(1)(d) the tenancy ended November 4, 2009 when the rental unit was vacated by the tenant. I accept that the tenant had provide the landlord with her forwarding address in writing before November 4, 2009. Therefore, in order to comply with the requirements of section 38(1) the landlord was obligated to either return the security deposit and interest to the tenant or make an application against it no later than November 19, 2009. Since the landlord did not refund the security deposit until November 25, 2009 the landlord was late returning the security deposit and the tenant is entitled to receive double the security deposit. I also find the tenant is entitled to interest on the original amount of the security deposit.

I do not find the landlord's misunderstanding of the dispute resolution process and the requirements of the Act to be a basis to find the landlord exempt from the application of section 38(6) of the Act.

Based upon the previous DRO's finding that the tenancy commenced April 1, 2003 I calculate the interest on the security deposit to be \$34.52. I award the tenant one-half of the filing fee paid for this application as the tenant was partially successful.

In light of the above findings, I provide the tenant with a Monetary Order calculated as follows:

Double security deposit (\$975.00 x 2)	\$ 1,950.00
Interest on original deposit	34.52
Less: security deposit received to date	(975.00)
Plus: one-half of filing fee	<u>25.00</u>
Monetary Order for tenant	\$ 1,034.52

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant was partially successful in this application and has been provided a Monetary Order in the amount of \$1,034.52 to serve 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: March 26, 2010.

Dispute Resolution Officer