

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided evidence by way of a registered mail service receipt dated January 07, 2010.

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed testimony of the tenant is as follows.

The tenancy began on or about April 01, 2009 and ended on October 15, 2009. The landlord collected a security deposit of \$1650 at the outset of the tenancy. By consent there were no move in or move out inspections conducted. On October 15, 2009 the tenant(s) and landlord agreed the tenant would receive \$1530 of the original deposit and the landlord wrote them a cheque for this amount on October 15, 2009 with the proviso they would not cash it for a week. The tenants waited over one week and when a bank transaction was attempted the cheque was returned as NSF. The tenant and landlord communicated at some length over a replacement cheque and on November 22 2009 the tenant again provided the landlord with a request for the deposit and a forwarding address in writing - which the landlord acknowledged receiving. The

landlord subsequently informed the tenant he would not be sending a replacement cheque to the tenant due to personal financial issues / bankruptcy.

Analysis

On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

Section 38(1) of the Act provides as follows (**emphasis for ease**)

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.

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 \$1530 which the parties agreed would be returned to the tenant, and which the landlord was obligated under section 38 to

return. The amount which is doubled is the \$1530 the parties agreed would be returned.

As a result I find the tenant has established an entitlement claim for **\$3060**.

Conclusion

I grant the tenant an order under section 67 for the sum of **\$3060**. If necessary, this order may be filed in the Small Claims Court and enforced 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*.