

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) to obtain a return of double his security deposit from the landlord. The tenant also applied to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. He testified that she sent the landlord a copy of his application for dispute resolution hearing package by registered mail on May 19, 2010. He provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the tenant has served the application for dispute resolution to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to obtain a monetary award from the landlord for double his security deposit? Is the tenant entitled to recover his filing fee for this application from the landlord?

Background and Evidence

The tenant testified that he moved into the rental premises on February 25, 2004. He said that he paid a security deposit of \$587.50 on February 25, 2004, which the landlord continues to retain plus interest.

The tenant testified that he vacated the rental unit on April 3, 2010. As he stayed in the rental unit for three days in April, he said that he paid the landlord a cheque for \$130.00 to look after the three-day extension of his tenancy. He gave undisputed testimony that he sent the landlord written notice of his forwarding address in early March 2010 by email and again when he left the rental unit early in April. The tenant submitted

undisputed evidence that the landlord did not forward him his security deposit within 15 days of his end to this tenancy. He asked for the issuance of a monetary Order requiring the landlord to return double his security deposit plus interest.

Although the landlord did not appear at the hearing, her written evidence indicated that she withheld the security deposit because of damage that she maintained was caused by the tenant.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). The triggering event is the provision by the tenant of the forwarding address in writing or the end of the tenancy whichever is later.

As the landlord neither returned the tenant's security deposit nor applied for dispute resolution within 15 days of the end of his tenancy, I find that the tenant is entitled to a monetary award of double the security deposit. The tenant is also entitled to applicable interest on his \$587.50 security deposit from February 25, 2004 until the date of this decision. As the tenant has been successful in his application, I allow him to recover his filing fee from the landlord.

Conclusion

I order the landlord to return double the tenant's security deposit as part of the monetary Order I issue in the tenant's favour in the following terms:

Item	Amount
Double Security Deposit ($\$587.50 \times 2 = \$1,175.00$)	\$1,175.00
Interest on original amount paid from Feb. 25, 2004 to date of this order	20.80
Filing Fees	50.00
Total Monetary Order	\$1,245.80

This Order allows the tenant to recover his filing fees for this application.

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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*.