

DECISION

Dispute Codes MNSD, FF

Introduction

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

Both parties attended this hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant's counsel testified that she sent the landlord a copy of the tenant's application for dispute resolution hearing package by registered mail on July 29, 2010. The landlord confirmed having received the tenant's application. I am satisfied that the tenant served these documents to the landlord in accordance with the *Act*.

The parties also exchanged evidence with one another, although the landlord testified that the evidence package sent to him did not include all of the pages cited by the tenant's counsel. As the pages allegedly missing from this evidence package were primarily directed at service of the documents and documents the landlord already possessed, I proceeded with this hearing.

During the hearing, the landlord stated that the tenant had misdirected the application to him personally, rather than his company which is correctly shown as the landlord. The tenant's counsel requested permission to revise the application for dispute resolution to add the company name to the application. In accordance with the *Act*, I agreed to this request to revise the tenant's application in this manner.

Issues(s) to be Decided

Is the tenant entitled to a return of double her security deposit from the landlord(s)? Is the tenant entitled to recover her filing fee for this application from the landlord(s)?

Background and Evidence

The landlord said that this tenancy was scheduled to commence on November 1, 2008, although he allowed the tenant to move in 10 days earlier on or about October 22, 2008. Monthly rent in this periodic tenancy was set at \$595.00, payable on the first.

The landlord testified that the written residential tenancy agreement which neither party provided to the Residential Tenancy Branch as evidence called for the tenant's payment of a security deposit of \$295.00. He testified that he has located a \$200.00 receipt issued to the tenant on October 17, 2008 for her cash payment of the security deposit. He said that he had been unable to locate any other receipt. He maintained that the tenant only paid a \$200.00 security deposit for the rental premises.

The tenant claimed that she was not provided a copy of the residential tenancy agreement, but recalls that she paid a security deposit of \$300.00.

The parties agreed that the tenant provided the landlord with written notice that she was planning to vacate the rental unit on May 18, 2009. She vacated the rental unit on June 1, 2009. The parties agreed that the tenant sent the landlord written notice of her new mailing address where the landlord could forward her security deposit in mid-June 2009. The landlord said that he sent the tenant a cheque for \$70.00, the amount which he calculated as owing to her from her security deposit in February 2010. The tenant said that she did not receive this cheque. The landlord testified that he does not believe that the tenant has cashed the February 2010 cheque. The landlord confirmed that he has not applied for dispute resolution to retain any portion of the tenant's security deposit.

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) of the *Act*). With respect to the return of the security deposit, the triggering event is the provision by the tenant of the forwarding address or the end of the tenancy whichever comes later.

In this case, the landlord admits that he neither applied for dispute resolution nor returned any portion of the tenant's security deposit to her at the forwarding address she provided until February 2010, well after the expiration of the 15-day period. In accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a return of double her security deposit from the landlord.

Different evidence was presented by the parties as to the amount of the security deposit and whether all of that security deposit was paid by the tenant. The landlord testified that he had written evidence he did not submit that the residential tenancy agreement required the tenant to pay a \$295.00 security deposit. I accept the landlord's sworn testimony that the amount of the security deposit on the residential tenancy agreement is \$295.00.

The landlord also testified that he had a receipt showing that the tenant paid only \$200.00 of the security deposit. The tenant maintained that she paid all of the \$300.00 security deposit.

In the absence of written evidence to support either party's oral testimony, I find that it more likely than not that the tenant paid a security deposit of \$295.00 on or about October 17, 2008, at the commencement of this tenancy. The landlord had an opportunity to present evidence regarding his attempts to obtain the remaining portion of the security deposit if the tenant did not pay all of the required security deposit. The absence of any written evidence from the landlord with respect to the alleged partial payment of the security deposit and any evidence in response to the amount claimed by the tenant's counsel leads me to find that the tenant paid all of the security deposit.

Since the tenant has been successful in her application, I allow her to recover her filing fee for this application from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the following terms:

Item	Amount
Security Deposit paid on October 17, 2008	\$295.00
Double Security Deposit	295.00
Interest on original amount paid from date security deposit paid to date of this order (\$0.92)	0.92
Filing Fee	50.00
TOTAL MONETARY ORDER	\$640.92

This Order requires the landlord to return the tenant's security deposit plus interest, an amount of \$295.00 for the landlord's failure to comply with section 38 of the *Act*, and to reimburse the tenant for her filing fee for this application.

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