Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>   MNSD

<u>Introduction</u>

This hearing was convened by way of conference call in repose to the tenant's application for the return of double the security deposit.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on February 08, 2013. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

<u>Issue(s) to be Decided</u>

- Is the tenant entitled to recover double the security deposit?

<u>Background and Evidence</u>

The tenant testifies that this tenancy was due to start on February 01, 2013. Rent for this unit was agreed at $700.00 per month. The tenant paid a security deposit of

$350.00 on January 01, 2013. The tenant testifies that he explained to the landlord that the tenant is on income assistance and the landlord would need to fill in a form for Welfare so the rent can be paid. The tenant testifies at first he landlord said this was not a problem but later the landlord would not fill in the papers for income assistance and told the tenant he does not like to do that.

The tenant testifies that he explained to the landlord that without the landlord filling in the form the tenant would not be able to pay the rent. The tenant testifies he told the landlord he would not therefore be able to move into the unit and requested the landlord to return the security deposit paid of $350.00. The tenant testifies that the landlord refused to return the deposit so the tenant wrote to the landlord and requested the landlord to return the deposit. This letter also contained the tenants forwarding address and was sent to the landlord on January 19, 2013. A copy of the letter and a copy of the postage receipt has been provided in evidence.

The tenant seeks to recover double the security deposit to the amount of $700.00 as the landlord has not returned the security deposit within 15 days.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that this tenancy never started but the landlord did receive the tenants forwarding address in writing on January 24, 2013 as it is deemed to have been received five days after posting. As a result, the

landlord had until February 08, 2013 to return the tenants security deposit or file an application to keep it. I find the landlord did not return the security deposit and has not filed an application to keep it. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **$700.00** pursuant to section 38(6)(b) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **$700.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

Dated: April 24, 2013

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Residential Tenancy Branch