



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: RPP, FF, MNSD

Introduction

This matter dealt with an application on behalf of the deceased tenant for a return of personal property, a return of a security deposit and to recover the filing fee for the cost of this application.

At the hearing that was held via teleconference the landlord and the deceased tenant were represented.

At the commencement of the hearing I was advised by the legal counsel for one of the applicants that the matter of access for return of personal property had been resolved and as such I will not deal with that matter in my decision.

Issue(s) to be Decided

The issue to be decided is whether the applicants are entitled to return of the security deposit?

Background and Evidence

The tenancy in this matter commenced on February 1, 1989. On or about June 23, 2008 the tenant in this matter was found deceased in the rental unit. The applicant as executor seeks an order that the landlord return the security deposit which was

originally paid by the tenant in February 1989 in the amount of \$360.00. The current value of the deposit as calculated by the landlord is \$605.45.

Analysis

I quote from s. 38 of the *Residential Tenancy Act*:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(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;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

I find that the landlord has received the tenant's forwarding address and a request for the return of the security deposit effective the date of the hearing of this application, namely, October 1, 2008. The landlord is required to comply with the request for the return of the deposit or to exercise one of the options as described in the cited legislation.

Conclusion

I decline to issue an order returning the security deposit at this time, but allow the tenant leave to re-apply in the event that the landlord does not comply with the requirements of s. 38 of the *Residential Tenancy Act*.

As the applicants were required to file this application to stimulate the return of the personal property, I find that the applicant is entitled to recover the filing of \$50.00 from the respondent landlord.

Dated: October 1, 2008