



Dispute Resolution Services

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

Decision

Dispute Codes:

MNSD Monetary Order for the Return of the Security Deposit and Pet Damage Deposit

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord.

Both the landlord and the tenant appeared along with representatives and each gave affirmed testimony.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the portion of security deposit that the tenant considers as having been wrongfully retained by the landlord.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security and pet damage deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
 - Did the tenant pay a security deposit?
 - Did the tenant furnish a forwarding address in writing to the landlord?

- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit or any portion of the deposit at the end of the tenancy?
- Did the landlord make application to retain the security deposit for damages or loss within 15 days of the end of the tenancy or the receipt of the forwarding address?

The burden of proof is on the applicant.

Background and Evidence

The tenant submitted into evidence, proof of registered mail sent and a copy of a letter dated June 15, 2008 addressed to the landlord containing the tenant's forwarding address and asking for the return of the security deposit. Also submitted into evidence was a written statement from the landlord which was not accepted as it had not been served on the other party. However verbal testimony by the landlord on the contents of this statement was permitted.

The tenant testified that the tenancy began on May 1, 2008, at which time a deposit of \$262.50 was paid and the tenancy ended on May 31, 2008. The tenant testified that the landlord returned a portion of the security deposit on June 7, 2008, in the amount of \$140.00, retaining \$122.50 without the tenant's signed authority to do so. The tenant testified that a forwarding address was furnished to the landlord on June 10, 2008 and that the landlord did not refund the deposit nor made an application to keep it within 15 days of receiving the address. The tenant is seeking compensation of double the security deposit under section 38(6) (b).

The landlord testified that the tenant did not vacate the unit until June 7, 2008 and that the tenant willingly agreed to pay \$122.50 for that portion of the month of June. The landlord testified that, after the tenant agreed to surrender this amount, the landlord then went to get a form so that he could obtain the required signature of the tenant to

release the applicable portion of the deposit. However, according to the landlord, the tenant then refused to sign and give written permission. The landlord also testified that he did not receive the tenant's forwarding address in June 2008 as claimed by the tenant and received it much later, at the end of July or August 2008. The landlord acknowledged that after the forwarding address was received, he did not make an application for dispute resolution to keep the deposit within 15 days. The landlord testified that sometime after receiving the Notice of dispute Resolution served by the tenant, he went to the residential tenancy office to make his own application for dispute resolution in response to the tenant's application and was advised that this wasn't necessary. This advice was likely based on the fact that the landlord's defense for keeping the deposit would be of no material relevance, because the 15-day deadline under the Act had already expired and the landlord had unfortunately neglected to make an application to keep the deposit within that timeline. By the time the landlord sought to make an application, it was already too late to make a case to keep the deposit. Notwithstanding the above, the landlord's position during the hearing was that he should still be entitled to retain part of the deposit based on the fact that the landlord suffered a genuine loss of rent.

Analysis

Security Deposit

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue.

The Act states that the landlord can only retain a deposit if the tenant agrees to this in writing. If the permission is not in written form and signed by the tenant, then the landlord's right to keep the deposit does not exist.

However, a landlord can keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord obtains an order retains the amount.

However, in order to make a claim against the deposit, the application for dispute resolution must be filed within 15 days after the forwarding address was received.

Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit within the time permitted to do so.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In regard to the landlord's own claim of damages and loss of rent for a portion of the month of June 2008, I am able to neither hear nor consider the landlord's claim during these proceedings as this hearing was convened to deal with the *tenant's* application under section 38 of the Act. That being said, I must point out that the landlord is at liberty to make a separate application if the landlord wants to initiate a formal claim for compensation for damages and loss pursuant to section 67 of the Act.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the portion of the security deposit that was wrongfully retained by the landlord, in the amount of \$245.00 plus interest of \$0.78.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$245.78 and hereby issue a monetary order for this amount in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

October 2, 2008

Date of Decision