



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 and each gave affirmed testimony.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the 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 tenant

Background and Evidence

The tenant testified that the tenancy ended on August 1, 2008 and that he had left an envelope addressed to the landlord containing the tenant's forwarding address and asking for the return of the security deposit of \$375.00.

The landlord testified that the tenant did not leave a forwarding address, only a phone number. The landlord testified that when an individual later dropped off a second set of the tenant's keys, the landlord advised this individual to let the tenant know that his security deposit refund was available to be picked up. The landlord testified that a security deposit cheque was waiting for the tenant, along with a large amount of mail addressed to the tenant, but the tenant failed to retrieve the deposit and his mail and never did provide a forwarding address. The landlord conceded that an address for the tenant was received on the tenant's application for dispute resolution. However, in anticipation of this hearing, the landlord decided to hold on to the deposit and wait for the proceedings to conclude.

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.

Section 38 (1) of the Act states that 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.

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.

Based on the evidence and the testimony, I find that the Landlord had received the Notice of Hearing containing the tenant's address in writing around the end of August 2008. I find that within 15 days of receiving this information, the landlord failed to return the deposit or make application for an order to keep it within the time permitted to do so.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$809.67, which represents \$750.00 for double the security deposit, \$9.67 interest and the \$50.00 fee paid for this application.

Accordingly, I hereby issue a monetary order for \$809.67 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 16, 2008

Date of Decision