



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 return of the security 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 deposit pursuant to section 38 of the Act. This 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 keep the security 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?

The burden of proof is on the applicant.

Background and Evidence

The tenant submitted into evidence, proof of registered mail sent. The tenant's agent testified that on December 7, 2008, written notice was given to the landlord that the tenant was vacating at the end of December. A forwarding address was provided in writing with a request for the return of the security deposit. The tenant testified that the tenancy began in September, 2008, at which time a deposit of \$275.00 was paid. The tenant testified that the landlord failed to return the deposit at the end of the tenancy. The tenant is seeking double the security deposit under section 38(6)(b).

The landlord testified that the tenant did not give sufficient notice and left the unit in an unclean state. The landlord also testified that the tenant had verbally agreed that the landlord could keep the deposit. The landlord acknowledged that after the forwarding address was received, she did not return the deposit nor make an application for dispute resolution to keep the deposit within 15 days.

Analysis

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 at the end of the tenancy. 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 retain the amount.

However, 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 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 or making application to retain it within 15 days, the landlord must pay the tenant double the amount of the security deposit.

In regards to the landlord's own claim of damages and loss of rent for a portion of the month of June 2008, I am not able to consider any claims by the landlord during these proceedings as this hearing was 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 an application for compensation should the landlord desire to do so pursuant to section 67 of the Act. That matter, however, is not related to the matter before me at this time.

I find that under section 38, the tenant is entitled to be paid double the security deposit wrongfully retained by the landlord, in the amount of \$550.00 plus interest of \$1.38.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$551.38 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.

Date of Decision

Dispute Resolution Officer