



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD Monetary Order for the Return of the Security Deposit

FF Recover the Filing Fee for this Application from the Respondent

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 retained by the landlord.

Although served by registered mail sent on April 17, 2009 to the landlord's residence, the landlord did not appear.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit of \$212.50 paid at the start of the tenancy on November 15, 2007.

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 determination is dependant upon the following:
 - Did the tenant pay a security deposit and pet damage 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 at the end of the tenancy?
- Was an order issued permitting the landlord to retain the deposit?

The burden of proof is on the applicant to show that the deposit was paid and that the forwarding address was given in writing.

Background and Evidence

The tenant testified that the tenant moved into the unit on November 15, 2007 and paid a security deposit of half a months rent in the amount of \$212.50 to the landlord. The tenant submitted into evidence a copy of the receipt. Although the parties were sharing a unit, the tenant had a rental agreement with the respondent and paid his rent directly to the respondent. The tenant testified that he moved out of the unit at the end of January 2009. The tenant testified that the forwarding address was given to the landlord at the time he vacated and that the landlord then made a promise to return the deposit by transferring funds into the tenant's bank account. The tenant submitted into evidence a signed statement from the landlord dated January 31, 2009, promising to return the deposit. The tenant testified that when this did not occur, the tenant sent a letter to the landlord dated March 11, 2009 requesting that the deposit be returned and again included his forwarding address. A copy of this communication was in evidence.

The tenant testified that the landlord has not returned the deposit, nor has the landlord made application to retain the deposit. The tenant is requesting double the deposit wrongfully retained by the landlord.

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. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the

tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount.

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 deposits.

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 or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant is entitled to \$478.61 comprised of double the deposit of \$212.50 amounting to \$425.00, \$3.61 interest on the original deposit, and the \$50.00 fee paid by the tenant for this application.

Conclusion

I hereby issue a monetary order to the tenant in the amount of \$478.61. 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.

July 14, 2009

Date of Decision

Dispute Resolution Officer