



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with cross applications. The tenant applied for return of double the security deposit and recovery of the filing fee. The landlord applied for compensation for damages to the rental unit and recovery of the filing fee. Both parties were represented at the hearing. The landlord confirmed receipt of the tenant's application for dispute resolution. The tenant stated he was unaware of the landlord's application. The landlord testified that he gave the Landlord's Application for Dispute Resolution to the owner of the currency exchange where the tenant's mail box is located.

Section 89(1) of the Act provides for service of documents with respect to monetary claims made against another party. Section 89(1) requires a landlord to serve a tenant in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides,
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

I found that the landlord did not serve the tenant in a manner that complies with section 89(1) of the Act and the landlord's application was dismissed with leave to reapply. I proceeded to hear the merits of the tenant's application only. Accordingly, the Monetary Order that accompanies this decision names only the landlord identified by the tenant in the tenant's application.

Issues(s) to be Decided

Is the tenant entitled to return of double the security deposit and recovery of the filing fee paid for this application?

Background and Evidence

Based on undisputed testimony of the parties, I make the following findings. The tenancy commenced in June 2007 and ended at the end of May 2009. The tenant had paid a \$300.00 security deposit in June 2007. A move-out inspection was conducted by the parties; however, the landlord did not prepare a condition inspection report and give a copy of the report to the tenant.

The tenant testified he gave the landlord's son his forwarding address in writing in early June 2009. The landlord testified the tenant's forwarding address was received in a letter given to the landlord's son and left in the landlord's mailbox in early June 2009.

The landlord testified that the tenant was informed that his security deposit would not be returned to him during the inspection so no action was taken by the landlord upon receiving the tenant's forwarding address in writing. The landlord was of the position that the tenant was responsible for additional cleaning and repairs to the rental unit. The tenant disputed those allegations and the parties could not reach a mutual agreement with respect to damages.

Analysis

As the parties were informed during the hearing, the landlord's claims for cleaning costs or other damages were not issues for me to decide upon for this proceeding as the landlord's application was dismissed due to inadequate service of the landlord's application upon the tenant. The purpose of this hearing was to hear the tenant's application for dispute resolution and determine whether the landlord complied with the Act with respect to returning the security deposit. The landlord is at liberty to make a separate application for damages.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damages; however, the landlord loses the right to obtain the tenant's consent if the landlord fails to meet the move-in and move-out inspection report requirements. In this case, the landlord did not meet the inspection report requirements. Therefore, the landlord could not have legally obtained the tenant's consent to make deductions for damages and the landlord was required to either return the security deposit, plus applicable interest, to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the date the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Residential Tenancy Branch
Ministry of Housing and Social Development

I am satisfied that the landlord received the tenant's forwarding address in writing in a manner that complies with the Act based on the landlord's testimony that it was received in the landlord's mailbox in early June 2009. Therefore, the landlord had 15 days from the date of receipt of the forwarding address to either repay the security deposit to the tenant or make an application for dispute resolution.

Since the landlord did neither of these two options within 15 days of receiving the forwarding address the landlord did not comply with section 38(1) of the Act and the landlord must now repay the tenant double the security deposit pursuant to section 38(6) of the Act.

In light of the above, the landlord did not have the legal right to retain the tenant's security deposit and the tenant has established an entitlement to return of double his security deposit and interest on the original deposit. The tenant is also awarded the filing fee paid for making this application. I provide a Monetary Order for the tenant calculated as follows:

Double security deposit (\$300.00 x 2)	\$ 600.00
Interest on original deposit	7.18
Filing fee	<u>50.00</u>
Monetary Order for tenant	<u>\$ 657.18</u>

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant is awarded double the security deposit, accrued interest and recovery of the filing fee. The tenant has been provided with a Monetary Order in the total amount of \$657.18 to serve upon the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 13, 2009.

Dispute Resolution Officer