

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the Tenant for a monetary order for return of the security deposit and her filing fee for the claim.

The Tenant served the Landlord's Agent with the Notice of Hearing and Application for Dispute Resolution in person on July 11, 2009. I find the Landlord has been duly served under the Act. Despite this, no one appeared for the Landlord at the hearing and it proceeded in the absence of the Landlord.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

Background and Evidence

The Tenant paid a security deposit of \$375.00 on October 1, 2007. The Tenant vacated the premises on June 30, 2008. The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

In March of 2009, the Tenant again provided her forwarding address in writing to the Landlord. There were numerous attempts by the Tenant to have her security deposit returned.

The Landlord performed no incoming or outgoing condition inspection reports.

Analysis

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

I find the Landlord has breached section 38 of the Act. I find that the Landlord is not entitled to retain any portion of the security deposit or interest. The Landlord has refused or neglected to return to the Tenant her security deposit and interest.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$807.07**, comprised of double the security deposit (2 x \$375.00), the interest on the original amounts held (\$7.07), and the \$50.00 fee for filing this Application.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible.

Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court against 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 27, 2009.

Dispute Resolution Officer