

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. The tenant was also seeking compensation for filing costs and preparing the dispute application.

Both the landlord and the tenant appeared and each gave 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 issue to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of double the security 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 to prove the deposit was paid and was not returned and that the landlord did not have authorization under the Act to keep it.

Background and Evidence

The tenancy began on August 15, 2007 with rent of \$1,700.00. Both parties acknowledged that:

- the security deposit of \$800.00 and pet damage deposit of \$800.00 were paid when the tenancy began
- the tenancy ended on September 26, 2009
- the forwarding address was provided to the landlord in September 2009
- the landlord returned \$225.00 of the deposit and retained the remainder

The tenant disputed the landlord's right to retain any portion of the deposit and is claiming refund of the deposit under the Act. The tenant was also seeking the costs of filing and preparing the dispute application. The total claim was stated as \$3,924.81.

Submitted into evidence was a substantial amount of evidence and photographs from both parties. The landlord testified that an assessment of damage was made and a portion of the deposit returned. The landlord attempted to give detailed testimony regarding costs and damages caused by the tenant, which the landlord felt should be deducted from the deposit being held.

Analysis

In regards to the return of the security 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, within 15 days after the end of the tenancy and receipt of the forwarding address, the landlord makes an application, proves that compensation is warranted and obtains a monetary order to retain the amount. Otherwise, the deposit must be returned in full within 15 days after the forwarding address was received.

Based on the evidence and the testimony, 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 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 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.

In regards to the claims by the landlord relating to damages and loss, I am not able to hear nor consider evidence on this matter because this hearing was convened solely 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 a separate application if the landlord decides to initiate a formal claim for compensation for damages and loss pursuant to section 67 of the Act.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the security deposit. This amounts to \$3,200.00 plus interest on the original \$1,600.00 in the amount of \$33.28 for a total of \$3,233.28. As the landlord has already refunded \$225.00, the amount owed is \$3,008.28.

The tenant was also seeking compensation for the time and expenses in preparing for the hearing. I find that these claims are not allowed, with the exception of the cost of the \$50.00 filing fee, which is specifically permitted under section 72(1) of the Act.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$3,058.28 comprised of \$3,200.00 for double the security deposit, \$33.28 interest and the \$50.00 paid to file this application. I hereby issue a monetary order for \$3,058.28 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.

February, 2010

Date of Decision

Dispute Resolution Officer