



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 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 retained by the landlord.

There was a hearing held on September 30, 2009 and the respondent did not appear so the hearing proceeded in the respondent's absence. It was found that the forwarding address was provided to the landlord on May 30, 2009 and the deposit was not returned, therefore a monetary order was granted against the landlord for double the security deposit to be paid to the tenant.

The landlord applied for a review consideration and the decision dated October 16, 2009 granted a review hearing. The landlord was required to serve the tenant with the Notice of Re- Hearing which was to be held on December 2, 2009. The hearing was held on schedule but neither party appeared and the matter was dismissed with leave to reapply. On January 14, 2010 the applicant tenant requested a review on the basis that the Notice of Re-Hearing scheduled for December 2, 2009 was never served by the respondent landlord, who had been granted the Review Hearing and was instructed to serve the Notice to the tenant. In a Review Consideration decision dated January 27, 2010, the applicant tenant's request for a re-hearing was granted and this was scheduled to be reheard on March 11, 2010 at 11:00 a.m. 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 issues to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of the security and pet damage 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 tenant.

Background and Evidence

The tenant testified that on September 3, 2008 the parties entered into a tenancy agreement and the tenant paid a \$375.00 security deposit. The tenancy was set to begin on October 1, 2008. The tenant testified that on September 10 the tenant gave notice to the landlord that he would not be moving into the rental unit and on May 30, 2009 the tenant gave the landlord his forwarding address in writing.

The landlord testified that the tenant's forwarding address was never provided.

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.

Section 38 (1) of the Act states that within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

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.

I find that there is no support for the landlord's persistent claim in the face of all indications otherwise that the tenant's address was never provided. At the time of this hearing the landlord still continued to maintain that the tenant's current address was not given, despite the fact that it was shown on the tenant's application for dispute resolution, which the landlord had obviously received being that the landlord attended.

Both Section 88 and Section 89 of the Act permit a landlord to be served documents :

“if the person is a landlord, to the address at which the person carries on business as a landlord;”

Pursuant to the Act, I find that the tenant was fully entitled to serve any documents to the dispute address where the landlord normally carried on business and the tenant did so. In any case, I must point out that the landlord was actually in violation of the Act from the outset being that there was no address for service for the landlord provided in

the tenancy agreement, as specifically required under section 13 of the Act.

Whatever excuses have been offered by the landlord, I find the landlord clearly failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address as legally required and therefore under section 38(6) the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$375.00 and is obligated under section 38 to return this amount together with the \$1.84 in interest which has accrued to the date of this judgment. The amount that is doubled is the base amount of the deposit.

Conclusion

I grant the tenant an order under section 67 for \$801.84, which sum includes the double security deposit, interest and the \$50.00 filing fee paid to bring this application. This order may be filed in the Small Claims Court and enforced as an order of that Court.

March 2010

Date of Decision

Dispute Resolution Officer