

DECISION

Dispute Codes: MNSD and FF

Introduction

This application was brought by the tenant on March 9, 2010 seeking a Monetary Order for return of his security deposit in double on the grounds that the landlord required a security deposit of one full month's rent in contravention of clause (4)(b)(1)(a) of the rental agreement and section 19 of the *Residential Tenancy Act*.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order in an amount that would double his security deposit.

Background and Evidence

This tenancy technically began on July 4, 2009 and ended on March 3, 2010, under a fixed term rental agreement signed on July 2, 2009. Rent was \$4,000 per month and the landlord held a security deposit of \$4,000 paid on July 2, 2009.

The circumstances leading to this tenancy are extremely unusual as the tenants originally moved into the rental unit on May 4, 2009 under an allegedly fraudulent rental agreement created by the former tenant without the knowledge or consent of the

landlord. The former tenant who was himself in arrears in rent did not pass the rent collected in May and June of 2009 to the landlords and absconded with substantial funds paid to him by the applicant tenant.

That matter is the subject of a police investigation.

In the present matter, the applicant tenant and the landlord concur that the security deposit was returned within 15 days of the end of the tenancy.

However, the tenant points to clause 4(B)(1) of the rental agreement which states, in summary, that the deposit must not exceed one-half of one-month's rent, that the landlord must pay the prescribed rate of interest, that – unless otherwise granted by tenant consent or hearing - it must be returned within 15 days of the end of the tenancy or receipt of the tenant's forwarding address.

Clause (4)(B)(3) provides for repayment in double if the landlord breaches clause (4)(B)(1).

The tenant proposes that, even though the deposit was returned within 15 days, because it was a full month's rent rather than one-half, the landlord was in breach of the agreement by charging a deposit of one full month's rent and he is entitled to a second payment of \$4,000.

Analysis

Clause 4 of the Rental Agreement attempts to highlight the provisions of section 38 of the *Act* for quick reference, but unfortunately inter-mixes the provisions of section 19 of the *Act*.

As noted, section 19 sets the one-half month limit on security deposits, and also provides the tenant's remedies to recover the overpayment, including withholding the amount from rent. It does not provide for doubling recovery of the overpayment.

However, section 38(1) of the *Act* provides only that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, the landlord must return the security deposit to the tenant or make application for dispute resolution to claim upon it.

Section 38(6) of the *Act* states that a landlord who does not comply with section 38(1), "must pay the tenant double the amount of the security deposit...."

It makes no reference to the overpayment contemplated by section 19 of the *Act*.

While I concur that the construction of clause 4(B)(1)(a) leads to some confusion, the *Act* supersedes the rental agreement and, as stated at section 5(2) of the *Act*, "Any attempt to avoid or contract out of this Act or the regulations is of no effect."

The *Act* clearly does not aim to include an overpayment under section 19 in the double payment remedy provided by section 38(6) of the *Act*.

Conclusion

I find that the tenant's security deposit was returned within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address. Accordingly, I find that the tenant is not entitled to have the security deposit returned in double.

Therefore, the application is dismissed without leave to reapply.

July 5, 2010