



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

FF Recover the Filing Fee for this Application from the Respondent

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.

Although served by registered mail sent to the subject address and the landlord's business address on May 8, 2010, the landlord did not appear. The tenant had submitted into evidence a copy of the registered mail receipts. I find that the tenant complied with the Act in properly serving the Notice of Hearing by registered mail.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit paid at the start of the tenancy on November 20, 2005.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
 - Did the tenant pay a security deposit and pet damage 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 at the end of the tenancy?
- Was an order issued permitting the landlord to retain the deposit?

The burden of proof is on the applicant to prove that the deposit was paid.

Background and Evidence

The tenant testified that the tenant had moved into the unit in November , 2005 and moved out pursuant to a mutual agreement to end tenancy on May 8, 2008. The tenant testified that the rent was \$875.00 and the tenant paid \$437.50, which was one half a month rent. The tenant testified that when the tenancy ended the landlord was advised of the tenant's forwarding address in writing. However the deposit was never returned and the tenant seeks a refund of double the deposit pursuant to section 38 of the Act.

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. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit. In this instance, the landlord repaid a portion of the deposit within the 15 days.

The Act states that the landlord can only retain a deposit without obtaining an order if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy and I find that the tenant did not give the landlord written permission to keep any part of the deposit, nor did the landlord make application for an order to keep the 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, pet damage deposit, or both, as applicable.

I find that the amount of tenant's security deposit that was withheld was \$437.50. I find that, under the Act, the tenant is entitled to double this amount, which is \$875.00, plus \$15.48 interest. I find that the tenant is also entitled to be reimbursed the \$50.00 paid for this application. Accordingly, I find that the tenant is entitled to a total monetary order for \$940.48.

Conclusion

I hereby issue a monetary order to the tenant in the amount of \$940.48. This order must be served on the Respondent in person or by registered mail and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

September 2010

Date of Decision

Dispute Resolution Officer