

Decision

Dispute Codes:

MNSD, FF

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. Both parties appeared and gave testimony.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit of \$300.00 paid at the start of the tenancy on March 1, 2010.

The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act.

The burden of proof is on the applicant.

Preliminary Issue: Landlord's Request for Adjournment

Prior to the hearing date, the landlord initiated a written request on August 10, 2010 seeking an adjournment on the basis that the landlord would be out of the country and therefore unavailable on the day of the hearing.

I found that there was not sufficient justification under the Act and Rules of Procedure to support imposing an adjournment on the other party. The tenant's request for an adjournment was therefore denied and the hearing proceeded as scheduled. However, the landlord did attend.

Background and Evidence

The tenant testified that the tenant had moved into the unit on September 1, 2003 and paid a security deposit of half a month rent in the amount of \$300.00. The tenant testified that he moved out of the unit on March 1, 2010. The tenant testified that the written forwarding address was given to the landlord on March 1, 2010, but the landlord has not returned the deposit, nor has the landlord made application to retain the deposit. The tenant requested double the deposit wrongfully retained by the landlord.

The landlord acknowledged that the security deposit was paid and was never returned to the tenant. The landlord had submitted evidence on September 15, 2010 including an invoice for cleaning costs of \$168.00 on April 7, 2010 and a copy of an incomplete condition inspection report with no move-in or move-out dates but signed by the tenant along with the tenant's forwarding address. The tenant testified that this evidence was never served on the tenant and that the tenant was never given a copy of the Inspection Report as required by 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.

The Act states that the landlord can only retain a deposit if at the end of the tenancy, 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, the landlord obtains a monetary order to retain the deposit

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.

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 or any pet damage deposit, and must pay the tenant double the amount of the security deposit.

In regards to the landlord's testimony and evidence defending its retention of the deposit on the basis of costs incurred, I find that these proceedings were not held on the landlord's application. Therefore, in regards to any monetary claims by the landlord relating to damages and loss, I am not able to hear nor consider the landlord's evidence. As this hearing was convened to deal with the *tenant's* application under section 38 of the Act, only that matter was before me. That being said, I must point out that the landlord is at liberty to make a separate application if the landlord wants to make a claim for compensation for damages or loss pursuant to section 67 of the Act.

Based on the evidence, I find that the tenant's security deposit with interest was \$310.62 and that under the Act the tenant is entitled to be compensated \$670.62. This represents \$600.00 for double the deposit, plus \$10.62 interest on the original deposit and the \$50.00 fee paid by the tenant for this application.

Conclusion

I hereby issue a monetary order to the tenant in the amount of \$670.62. 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.

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: September 2010.

Dispute Resolution Officer