

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 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 are:

- Whether the tenant is entitled to the return of double the security deposit pursuant to section 38 of the Act. This determination depends on 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 not returned and that the landlord did not have authorization under the Act to keep it.

Background and Evidence

The tenant testified that the deposit of \$387.50 was paid when the tenancy began in February 1997. The tenant testified that the forwarding address was given verbally at the end of the tenancy and in writing on March 16, 2010. However the deposit was not refunded. The tenant testified that at one point the landlord had given the tenant a partial refund by cheque, but the tenant did not cash the cheque as it was not dated.

The tenant testified that despite providing the forwarding address the landlord did not refund the deposit nor make an application to keep it within 15 days of receiving the address. The tenant is seeking compensation of double the security deposit under section 38(6)(b).

The landlord acknowledged that the tenant had not given written permission for the landlord to keep the deposit for cleaning costs and that the landlord did not make an application to keep the deposit. The landlord stated that she believed that she had a legal right to deduct costs for cleaning from the deposit held in trust for the tenant.

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. 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.

The Act does entitle a landlord to make a claim against the deposit to satisfy a liability or obligation of the tenant if the landlord files an application for dispute resolution within 15 days after the written 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 and obtain 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 any claims by the landlord relating to damages and loss, I am not able to hear nor consider evidence on this matter as this hearing was convened 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 wants 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 that was wrongfully retained by the landlord, in the amount of \$775.00 plus interest of \$50.99 and the \$50.00 cost of the application for total compensation of \$875.99.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation and I hereby issue a monetary order for \$875.99 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.

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: October 2010.

Dispute Resolution Officer