

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 on May 21, 2010, the landlord did not appear.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit of \$1,300.00 paid at the start of the tenancy on April 29, 2009.

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 depends on answers to 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 and that a written forwarding address was provided to the landlord.

Background and Evidence

The tenant testified that the tenant paid a security deposit of half a month rent in the amount of \$1,300.00 and moved out of the unit on April 29, 2009. The tenant testified that the forwarding address was given to the landlord at that time, but that the landlord did not return the deposit, and in fact sent a statement of charges that exceeded the deposit. A copy of this communication was placed in evidence. Although there was no move-in and move-out condition inspection report, as required by the Act, the tenant stated that he did agree to pay for the carpet cleaning of \$103.95, the broken window latch for \$75.00, general cleaning of \$150.00 and \$150.00 estimated for flooring scratches. Other than the above deductions totaling \$478.95, the tenant is requesting that the deposit wrongfully retained by the landlord be refunded.

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 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 director orders that the landlord may retain the amount.

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 deposits.

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, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit with interest was \$1,300.00 and that under the Act the tenant is entitled to \$2,650.00 which also includes the \$50.00 fee paid by the tenant for this application.

After deducting the agreed-upon payment of \$478.95, the tenant is entitled to a monetary order in the amount of \$2,171.05.

Conclusion

I hereby issue a monetary order to the tenant in the amount of \$2,171.05.

The 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