

Decision

Dispute Codes:

MNSD, Monetary Order for the Return of the Security 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 retained by the landlord.

Although served with the Notice of Hearing and application in person on May 27, 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 remaining portion of the security deposit improperly 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 the security deposit pursuant to section 38 of the Act. This determination depends 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 show that the deposit was paid and that the forwarding address was given.

Background and Evidence

The tenant testified that the tenant had moved into the unit in February 2005 paying a security deposit of half a month rent in the amount of \$375.00 and moved out of the unit on April 30, 2010. The tenant testified that the forwarding address was given to the landlord prior to moving out and the landlord did return a portion of the deposit on May 11, 2010 in the amount of \$208.28 and retained the rest of the deposit without and order nor the tenant's written consent to do so. The tenant is requesting double the deposit wrongfully retained by the landlord.

Analysis

In regards to the return of the security 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 tenant's written forwarding address has been received, 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 an order has been obtained by the landlord after the end of the tenancy to retain the amount for rent or damages.

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.

I find that under the Act the tenant is entitled to a refund of \$813.28 This represents \$750.00 for double the deposit, plus \$13.28 interest on the original deposit and the \$50.00 fee paid by the tenant for this application. I find that the landlord has already refunded a portion of the deposit which reduces that monetary compensation remaining by \$208.28 leaving \$605.00 owed to the tenant.

Conclusion

I hereby issue a monetary order to the tenant in the amount of \$605.00. 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