

Decision

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and pet damage deposit retained by the landlord.

Although served with the Notice of Hearing and application by registered mail sent on June 18, 2010, the landlord did not appear.

Issue(s) to be Decided

The tenant was seeking to receive the return of the security deposit of \$600.00 and pet damage deposit of \$300.00 paid at the start of the tenancy on July 1, 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 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 moved into the unit on July 1, 2010 and paid a security deposit of half a month rent in the amount of \$600.00 and Pet damage deposit of \$300.00 and moved out of the unit on May 1, 2010. The tenant testified that the

written forwarding address was given to the landlord on May 9, 2010 and there was email contact discussing the tenant's request for the return as well. However, the landlord has not returned the deposits, nor made application to retain the deposits. The tenant is requesting double the deposits wrongfully retained by the landlord.

Analysis

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act states that within 15 days after the day the tenancy ends, and the tenant's written forwarding address has been received, the landlord must either repay the security and 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 of the tenant, or if an order has been obtained by the landlord after the end of the tenancy to retain the amount for rent or damages. In this instance 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 by 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.

I find that the tenant's deposits amounted to \$900.00 in total and that under the Act the tenant is entitled to a monetary order of \$1,850.00. This represents \$1,800.00 for double the 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 \$1,850.00. 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