



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 paid at the start of the tenancy on October 1, 2009. The issue 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 was on the applicant to prove that the deposit was paid and the burden of proof was on the respondent landlord to prove that the deposit was returned or that the landlord had a right under the Act or by Order to keep it.

Background and Evidence

The tenant testified that the tenancy began on October 1, 2009. The rent was \$650.00 and a security deposit of \$325.00 and pet damage deposit of \$325.00 was paid. The tenant testified that the tenancy ended on December 31, 2010 and the written forwarding address was provided to the landlord on January 14, 2010. A copy of the January 14, 2010, letter was in evidence. The tenant testified that shortly after the address was provided, the landlord repaid \$400.00 of the deposit in cash back to the tenant. The tenant testified that despite repeated communications on the subject, the landlord failed to return the remainder of the security and pet damage deposit and on June 17, 2010, the tenant was finally forced to make application for dispute resolution.

The landlord testified that because the landlord had miscalculated the amount of the deposit owed, only \$400.00 was promptly repaid in error instead of the full \$650.00 retained in trust for the tenant. The landlord testified that once it the correct amount

was clarified by the tenant, each of the two landlords had mistakenly presumed that the other had repaid the final \$250.00 owed to the tenant.

Analysis

In regards to the return of the security and pet damage deposits, I find section 38 of the Act is clear. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the written forwarding, 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. In this instance, the landlord repaid a portion of the deposit within the 15 days.

The Act states that the landlord can only retain a deposit without obtaining an order if the tenant agrees in writing that the landlord can keep it to satisfy a liability at the end of the tenancy. The tenant testified that this did not occur and I find that the tenant did not give the landlord written permission to keep any part of 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 must pay the tenant double the amount of the security deposit and pet damage deposit.

I find that the landlord's failure to pay back the entire amount of the deposit would entitle the tenant to be paid double the deposit minus the \$400.00 already paid. In this instance, the security and pet damage deposits paid in October 2009 totalled \$650.00, and double this amount would be \$1,300.00. After deducting the amount repaid, I find that the tenant is entitled to \$900.00 plus the \$50.00 cost of filing the application. Accordingly, I find that the tenant is entitled to a total monetary order for \$950.00..

Conclusion

I hereby issue a monetary order to the tenant in the amount of \$950.00. 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: November 2010.

Dispute Resolution Officer