



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 retained by the landlord.

Although served with the Notice of Hearing and application by registered mail sent on June 29, 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 \$250.00 paid at the start of the tenancy four years ago.

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.

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Background and Evidence

The tenant testified that the tenant had moved into the unit approximately four years ago and paid a security deposit of half a month rent in the amount of \$250.00 and moved out of the unit on May 31, 2010 because the house was sold by the landlord. The tenant testified that the forwarding address was given to the landlord at the end of the tenancy and the tenant submitted a copy of a letter into evidence that verified the tenant had provided a forwarding address to the landlord. However, according to the tenant, the landlord failed to return the deposit, and has not made application to retain it. The tenant is requesting double the deposit 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 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 to the tenant with interest or make an application claiming against the security deposit or pet damage 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 the tenant's security deposit with interest was \$257.78 and under the Act the tenant is entitled to \$557.78. This represents \$500.00 for double the deposit, plus \$7.78 interest on the original 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 \$557.78. 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