



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of double the unreturned portion of the security deposit and recovery of the filing fee. The landlord did not appear at the hearing. The tenant affirmed that he personally served the landlord with his Application for Dispute Resolution and Notice of Hearing at her residence within three days of making the application. Having been satisfied the landlord has been sufficiently served with the hearing documents I proceeded to hear from the tenant without the landlord present.

Issues(s) to be Decided

Is the tenant entitled to return of double the unreturned portion of the security deposit?

Background and Evidence

The tenant testified as follows. The tenancy ended in January 2010 and the tenant provided a forwarding address to the landlord in writing on February 2 or 3, 2010. The landlord made an Application for Dispute Resolution to retain the security deposit under file no. 242821. On May 19, 2010 a Dispute Resolution Officer conducted a hearing and issued a decision to the parties. The DRO authorized the landlord to retain \$175.00 of the tenant's \$500.00 security deposit and instructed the landlord to return the balance to the tenant forthwith. The landlord has not refunded the balance of the security deposit of \$325.00 to the tenant.

Upon enquiry, the tenant confirmed that his address has not changed and that he has attempted to speak with the landlord regarding this issue several times. The tenant also wrote the landlord in June 2010 requesting the refund of \$325.00 after receiving the DRO's decision.

Analysis

I have reviewed the decision issued for file no. 242821 and confirm that the landlord was instructed to return the balance of the security deposit to the tenant forthwith. I find the tenant entitled to the balance of the security deposit of \$325.00; however, I do not find the tenant entitled to double the deposit.

The provision for double the security deposit is section 38(6) of the Act. Section 38(6) of the Act applies where the landlord violates section 38(1) of the Act by failing to return the security deposit or make an Application for Dispute Resolution within 15 days of the tenancy ending or receiving the tenant's forwarding address. In this case, the landlord filed an Application for Dispute Resolution on February 11, 2010 which is within 15 days of the date the tenant provided a forwarding address and did not breach section 38(1). Therefore, I conclude the tenant is not entitled to double the security deposit.

I accept that the landlord knew where to send the balance of \$325.00 to the tenant as the landlord served the tenant at his forwarding address when she made her application on February 11, 2010 and it is the same address that appears on the tenant's application. Therefore, the only logical conclusion is that the landlord has chosen not to refund the balance of the security deposit as instructed to do which caused the tenant to make this application. For this reason, I award the filing fee to the tenant.

With this decision I provide the tenant with a Monetary Order for the balance of the security deposit in the amount of \$325.00 plus the \$50.00 filing fee he paid for this application.

Conclusion

The tenant is provided a Monetary Order for the total amount of \$375.00 to serve upon the landlord.

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 24, 2010.

Dispute Resolution Officer