

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 the tenant and a witness served the landlord with the Notice of Hearing and application in person on July 21, 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 remainder of the security deposit 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 on March 1, 2010 and paid a security deposit of half a month rent in the amount of \$597.50 and pet damage deposit of \$597.50. The tenant testified that he moved out of the unit on June 30, 2010 and gave the landlord a written forwarding address at the Move-Out Condition Inspection walk-through. The tenant testified that the landlord returned the pet-damage deposit, but kept all but \$37.50 of the security deposit and despite the tenant's emails to the landlord pointing out applicable residential tenancy law, the landlord has not returned the rest of the deposit, nor has the landlord made application to retain the deposit. 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 states that 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, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit was \$597.50 and that under the Act the tenant is entitled to the return of double this amount totalling \$1,195.00, less the \$37.50 already returned and plus the \$50.00 paid for the application. I find that the tenant is therefore entitled to total monetary compensation of \$1,207.50.

Conclusion

I hereby issue a monetary order to the tenant in the amount of \$580.76. 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: December 2010.

Dispute Resolution Officer