



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.

The tenants and the landlord participated in the hearing by telephone. Both parties gave testimony.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit that the tenant considers as having been wrongfully retained by the landlord.

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 regarding the right to retain the security deposit is on the respondent landlord.

Background and Evidence

The tenancy began on November 1, 2009 and a security deposit of \$700.00 was paid. The rent was set at \$1,400.00 per month. The tenancy ended on July 1, 2010. A copy of the tenancy Agreement was in evidence.

The tenant testified that the landlord failed to return the deposit within 15 days after the tenancy ended and written forwarding address provided.

The landlord testified that the tenant provided a forwarding address at the end of June 2010 and a partial refund was sent to the tenant. A copy of a cheque for \$419.12 dated July 15, 2010 was in evidence along with an envelope post marked July 29, 2010. The landlord stated that in September, a stop-pay was placed on the cheque. The landlord testified that the tenant had left damages and the landlord felt that money was owed. Evidence had been submitted by the landlord to verify the landlord's losses.

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. The Act states that the landlord can retain a security deposit if the tenant gives written permission at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord's right to simply keep the deposit or any portion thereof does not exist.

A landlord may also be able to retain the deposit to satisfy a liability or obligation of the tenant if the landlord makes an application for dispute resolution and successfully obtains a monetary order retain the amount for damages or losses incurred. However, in order to make a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later. Based on the evidence and the testimony, I find that at the end of the tenancy the tenant did not give the landlord written permission to keep the deposit, nor did the landlord subsequently make an application seeking an order to keep the deposit within the time permitted to do so.

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, and must pay the tenant double the amount of the security deposit.

In regards to the landlord's own claim for damages, I was not able to hear nor consider the landlord's claim against the tenant during these proceedings as this hearing was convened to deal with the *tenant's* application under section 38 of the Act. The landlord did not make a cross application. That being said, I must point out that the landlord is at liberty to make a separate application to claim damages if the landlord feels that compensation from the tenant is warranted pursuant to section 67 of the Act.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the portion of the security deposit of \$700.00 that was wrongfully retained by the landlord, totalling \$1,400.00 plus the \$50.00 cost of filing the dispute resolution application.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,450.00 and hereby issue a monetary order for this amount in favour of the tenant. 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