



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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.

The tenant 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 issues 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.

Background and Evidence

The tenancy began on January 23, 2010 with rent set at \$2,000.00 per month. A security deposit of \$1,000.00 and pet damage deposit of \$1,000.00 was paid. A copy of the tenancy Agreement was in evidence. The tenancy ended on August 29, 2010 at which time the tenant's forwarding address was provided.

The tenant testified that the landlord did not return the deposits.

The land lord testified that damage was done to the unit and supplied evidence to support this testimony. The landlord also claimed that the tenant had signed over the deposit and referred to the move-in and move-out condition inspection report which showed that the tenant agreed to \$1,000.00 deduction from the security deposit and \$1,000.00 deduction from the pet damage deposit and was allegedly signed by the tenant on January 22, 2010 at the start of the tenancy.

The tenant disputed that he had ever signed over his deposits at the start of the tenancy. The tenant stated that he was never given a copy of the inspection reports as required under the Act. The tenant pointed out that in the space for the tenant's signature "on move out" there was no signature and someone else had written "AS PER ABOVE AGREEMENT".

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. (My emphasis.)

Even if I accepted that on January 22, 2010, at the beginning of the tenancy, the parties fully agreed that the tenant would forfeit his entitlement to the return of the security deposit, this is contrary to section 20 (e) of the Act, which states that a landlord must not *"require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement."*

In any case, I find that the evidence showed that the tenant had not granted the landlord written permission to retain \$1,000.00 from the security deposit nor \$1,000.00 from the pet damage deposit at the end of the tenancy.

Without written permission from the tenant to keep the deposit, a landlord may also be entitled to retain the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord has made a successful application for dispute resolution and obtained an order retain the security deposit in satisfaction for damages or money owed.

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 the the landlord did not return nor make application for 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 testimony regarding damages, I was not able to hear nor consider the landlord's claim against the tenant during these proceedings. 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 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 \$1,000.00 that was wrongfully retained by the landlord and double the \$1,000.00 pet damage deposit. The total monetary entitlement is \$4,000.00 plus the \$50.00 cost of filing.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$4,050.00 and I 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: January 2011.

Residential Tenancy Branch