



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both, the tenant and the landlord were represented at today's hearing

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed facts before me are as follows. The tenancy began on July 01, 2009 and ended on February 15, 2010. The landlord collected a security deposit of \$600 at the outset of the tenancy and still retains it in full. There was a move in inspection conducted at the outset. There was a move out inspection conducted at the end of the tenancy, although it was not recorded by the landlord as required by Section 36(2) of the Act.

The tenant claims that on March 08, 2010 she may have either sent the landlord her written forwarding address by registered mail, or may have delivered it by hand to the landlord's mailbox. The tenant has not provided proof in support of the registered mail and could not provide a tracking number for the registered mail. The landlord claims she did not receive the tenant's forwarding address until she received the Notice for this Dispute Resolution Hearing.

Analysis

The burden of proof in this matter lies with the applicant. On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

Section 38 of the Act provides, in part, as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

And

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

In this matter I find the tenant's testimony regarding provision of the forwarding address as ambiguous and lacking credibility. I prefer the landlord's testimony that she first received the tenant's forwarding address when she received the tenant application and Notice for this hearing. Therefore, the tenant **is not** entitled to double the original amount of the deposit as per Section 38 of the Act.

Section 36 of the Act, in part states as follows (**emphasis for ease**)

Consequences for tenant and landlord if report requirements not met

36 (2) Unless the tenant has abandoned the rental unit, **the right of the landlord to claim against a security deposit** or a pet damage deposit, or both, for damage to residential property **is extinguished if the landlord**

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord did not complete a condition inspection report in concert with the regulations and is therefore precluded from making a claim to retain the deposit.

Therefore, as the landlord's right to keep the deposit has been extinguished, it is appropriate that I order the landlord to return the deposit to the tenant in the full amount of **\$600**. The tenant is further entitled to recovery of the **\$50** filing fee for this application for a total entitlement of **\$650**.

Conclusion

I grant the tenant a Monetary Order under section 67 for the sum of **\$650**. If necessary, this order may be filed in the Small Claims Court 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*.