Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Dispute Codes:

MNSD, OLC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order that the landlord comply with the Act and for the return of the security deposit retained by the landlord.

One of the two 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 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. .

Background and Evidence

The tenancy began on February 1, 2004 and the current rent was set at $1,200.00 per month. A security deposit of $600.00 was paid. The tenant moved out on August 31, 2010 and provided a written forwarding address. The landlord had returned $6.01 to the tenant deducting $295.22 cost of filling the fuel tank and $320.00 removing blackberry bush overgrowth.

A copy of the tenancy Agreement and the Move-in/Move-out Condition Inspection was in evidence.

The tenant testified that the tenant was willing to pay for the cost of the filling the fuel tank but had already completed the outstanding yard work in question. The tenant stated that he had never signed an agreement that the landlord could retain the $600.00 security deposit and was not expecting to only receive a cheque for $6.01 that the tenant did not cash. The tenant was now seeking the return of the security deposit.

The landlord testified that, although the he had not made an application seeking an order to retain the security deposit for damages owed, the landlord believed that this

was not necessary because the tenant had signed the move-out inspection report agreeing to "*cost of oil - cost of yard cleanup and brush removal*".

Analysis :

In regards to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit if the tenant gives written permission at the end of the tenancy for the amount. If the tenant's permission is not in written form and signed, then the landlord's right to keep the deposit does not exist.

I find that the landlord may retain the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord has made an application for dispute resolution and successfully obtains an order to retain the amount. 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 tenant did not give the landlord written permission to keep the $600.00 deposit and interest, nor did the landlord make application for, and obtain, 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. Accordingly, I find that the tenant is entitled under the Act to a refund of $1,200.00 plus $21.23 interest.

In regards to the landlord's claim for damages, I was not able to hear nor consider the landlord's claim against the tenant during these proceedings because the 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.

However, the tenant stated that they are aware that $295.22 is still owed for the fuel top-up and agreeable to having this amount deducted from the monetary claim.

Therefore, I find that the tenant is entitled to a monetary order of $976.01 comprised of $1,200.00 for double the security deposit, less $295.22 for the fuel costs, leaving $904.78, plus interest of $21.23 on the original security deposit and the $50.00 cost of the application.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of $976.01 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: February 2011.

Residential Tenancy Branch