



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was convened in response to an application by the tenant filed on November 19, 2010 for a monetary order for the return of the security deposit and compensation under section 38. The onus is on the applicant to prove their claim on a balance of probabilities.

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

This hearing does not have benefit of document evidence. The undisputed testimony before me is that the tenancy began on January 01, 2006 and ended on September 01, 2010. The landlord collected a security deposit at the outset of the tenancy and as at the end of this tenancy has been holding the agreed amount of \$800. There was no move out inspection conducted at the end of the tenancy as the landlord did not offer or conduct an inspection.

The contrasting testimony is: the tenant testified that they sent the landlord a letter on November 01, 2010 which included their written forwarding address. The landlord testified they did not receive the tenant's letter and disputes that it was sent. I do not

have benefit of this evidence. The tenant has not provided a copy of the letter or evidence that they sent the letter to the landlord. The parties disagree as to the administration of the deposit or their understanding of the amount of the security deposit at the end of the tenancy. None the less, the landlord testified that they have always made \$650 available to the tenant, and that they were at liberty to claim it at anytime. The tenant disagrees there was ever any arrangement as such.

Analysis

On preponderance of the contrasting testimony and on the balance of probabilities, I have reached a decision.

Section 38 of the Residential Tenancy Act provides, in part, as follows:

Section 38(1)

- 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.

- further:
- 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.

I find the tenant has not provided sufficient evidence the landlord was provided a forwarding address, therefore the tenant is not entitled to the doubling provisions of Section 38(6)(b). None the less, the landlord's right to retain the deposit, or file a claim

for the deposit has been extinguished as the landlord did not comply with the condition inspection requirements of Section 35 and 36 of the Act. As a result, it is appropriate that I return the security deposit, in the agreed amount of \$800, to the tenant.

Conclusion

I grant the tenant an order under section 67 for the security deposit and accrued interest in the amount of **\$828.30**. 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*.