



Dispute Resolution Services

Page: 1

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 September 30, 2010. The landlord collected a security deposit of \$825 at the outset of the tenancy and still retains it in full. There was a move in inspection conducted at the outset although it was not recorded by the landlord as required by Section 23(4) and (5) of the Act. There was no move out inspection conducted at the end of the tenancy, although the landlord claims that they provided opportunity for it to occur.

The tenant claims that, "about two weeks before filing for dispute resolution", they provided the landlord with written forwarding address by posting a letter to this effect on the landlord's office door. The tenant has not provided proof in support of this testimony and the landlord claims they did not receive the tenant's forwarding address until they 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 vague, and lacking evidentiary support. As the onus is on the tenant to support this claim, I find that in the absence of more substantive evidence, the tenant has not met the test so as to entitle them to the doubling provisions for the deposit as per Section 38(6) of the Act.

Section 23 and 24 of the Act, in part; state as follows (**emphasis for ease**)

Condition inspection: start of tenancy

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Consequences for tenant and landlord if report requirements not met

24 (2) The right of a 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 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) 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 Act and 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 **\$825**. The tenant is further entitled to recovery of the **\$50** filing fee for this application for a total entitlement of **\$875**.

Conclusion

I grant the tenant a Monetary Order under section 67 for the sum of **\$875**. 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*.

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*.