



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

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.

Both the tenants and the landlord participated in the hearing by telephone and 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 are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination depends upon the following:
 - Did the tenant pay a security deposit and pet damage deposit?
 - Did the tenant furnish a forwarding address in writing to the landlord?
 - Did the tenant provide written consent to the landlord to keep the security and pet deposits at the end of the tenancy?
 - Did the landlord make an application to retain the security deposit for damages or loss within 15 days of the end of the tenancy or the receipt of the forwarding address?

The burden of proof regarding the right to retain the security deposit is on the respondent.

Background and Evidence

The tenancy began on February 1, 2005 and the current rent was \$850.00 per month 1st day of each month. A security deposit of \$400.00 and a pet damage deposit of \$400.00 was paid. The tenant testified that the tenancy ended on September 30, 2010. The written forwarding address was provided on December 1, 2010.

The tenant testified that the landlord did not return the deposit and did not make an application to obtain an order for damages keep it.

The land lord submitted evidence including photographs indicating that damage was done to the unit and costs were incurred for cleaning and repairs to the unit. The landlord stated that she was given the impression that the landlord's claims for damages would be heard and considered during these proceedings.

Analysis : Claim for Return of Security Deposit

In regard 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. If the permission is not in written form and signed by the tenant, then the landlord's right to merely keep the deposit does not exist.

However, a landlord could be able to retain the deposit to satisfy a liability or obligation of the tenant only if, after the end of the tenancy, the landlord has made an application for dispute resolution and successfully obtains an order retain the amount. However, 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 deposit, nor did the landlord 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.

With respect to the landlord's own claim for damages and losses caused by the tenant's actions or inaction, I was not able to hear nor consider the landlord's claim against the tenant during these proceedings. This hearing was convened solely to deal with the *tenant's* application made under section 38 of the Act and 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 security deposit of \$400.00 and double the \$400.00 pet damage deposit retained by the landlord, in the amount of \$1,600.00 plus interest of \$28.31.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,678.31 comprised of \$800.00 for double the security deposit, \$800.00 for double the pet deposit, \$28.31 interest and the \$50.00 cost of the application. I hereby issue a monetary order for \$1,678.31 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: April 2011.

Residential Tenancy Branch