

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application by the Tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for double the security deposit?

Background and Evidence

Both parties have attended the hearing and have referred to the Tenant's evidence package. The Tenant has provided a copy of the demand for the return of the security deposit by registered mail to the Landlord on February 2, 2011. The Landlord did not respond to this letter. The Tenant has also provided the registered mail receipt to confirm that the Tenant's notice of hearing and evidence package was sent on February 28, 2011 to the Landlord. The Landlord has not filed any evidence.

The Tenant states that a security deposit of \$240.00 was paid on January 24, 2011 as shown on the receipt issued by the Landlord for "deposit". The Landlord states that he thought that a "deposit" and "rent" were the same and states that the Tenant moved in on January 31, 2011 and stayed one night. Both parties agreed that there was no signed tenancy agreement. The Tenant states that one was not given to him until he went to move in on January 31, 2011 and that he was unaware of the conditions of the agreement and refused to sign it. The Tenant has provided this copy of the incomplete tenancy agreement into evidence. The Tenant disputes that at this time he refused to move in and demanded the return of his "deposit" and followed up with a registered mail demand of the security deposit and provided his forwarding address in writing in this letter.

Analysis

Based upon the evidence provided by the Tenant, I find that the Landlord was properly served with the notice of hearing and evidence package by registered mail.

I am satisfied that the Landlord has not complied with the Act. Based upon the evidence provided and on a balance of probabilities, I prefer the evidence of the Tenant over that of the Landlord. Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

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

(a) **the date the tenancy ends**, and

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

the landlord must do one of the following:

(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;

(d) **make an application for dispute resolution** claiming against the security deposit or pet damage deposit.

Through the Landlord's own direct testimony, he has neither repayed the security deposit nor has he filed an application for dispute resolution.

The Act further states,

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

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

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

The Landlord has breached the Act and must pay double the \$240.00 security deposit. The Tenant has established a claim of \$480.00. The Tenant is also entitled to the recovery of the \$50.00 filing fee. I grant the Tenant an order under section 67 for the balance due of \$530.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$530.00.

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: June 09, 2011.

Residential Tenancy Branch