



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the Tenant for a monetary order for return of the security deposit.

The Tenant served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on February 28, 2011, and deemed received under the Act five days later. Despite this the Landlord did not attend the hearing. I find the Landlord has been duly served in accordance with the Act.

The Tenant appeared, gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

Background and Evidence

The Tenant testified he paid a security deposit of \$225.00 in early September of 2010, to the Landlord along with one month of rent in advance. The Landlord was offering a rental site to the Tenant for a fifth wheel trailer. The Tenant had not yet purchased a trailer. Ultimately, the Tenant did not purchase a trailer or move into the site.

On January 31, 2011, the Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to, by registered mail. The Tenant did not sign over a portion of the security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached the Act.

While the Landlord may have been entitled to keep the rent paid, there was no evidence to show that the Landlord had applied for arbitration within 15 days of the end of the

tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as is required under section 38 of the Act.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified in keeping it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$450.00**, comprised of double the security deposit.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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*.

Dated: June 08, 2011.

Residential Tenancy Branch