



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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.

Despite being served by registered mail sent on March 29, 2011 as verified by a copy of the Canada Post receipt and tracking slip, the landlord did not appear.

Preliminary Issue

A previous hearing was held on March 7, 2011 on cross applications for monetary claims by both the landlord and the tenant. Pursuant to section 63 of the Act, the dispute resolution officer presiding over that hearing had permitted the parties to tentatively resolve their claims through a mutually agreed-upon settlement. The terms were that the landlord would not pursue the landlord's monetary claim for damages and the tenant would waive a portion of the security deposit claim and instead of receiving "double" the security deposit, he would accept a refund of the original amount paid, provided the landlord promptly mailed the funds on or before midnight March 18, 2011. The tenant testified that the landlord had failed to fulfill his commitment and therefore the mutual agreement made as a settlement of the dispute was no longer in effect.

Section 77 of the Act states that, except as otherwise provided in the *Act*, a decision or an order of the director is final and binding on the parties. Therefore no subsequent determination can be made on a matter already decided.

With respect to the question of whether the matter before me, would be considered as "rez judicata", meaning it was already determined, based on the fact that the tenant had already brought this matter to dispute resolution before, I find that the matter was only resolved by agreement and therefore no determination was ever made by the dispute resolution officer with respect to the merits of the dispute between these two parties. While an order was issued on March 7, 2011, it was a contingent order that was not necessarily required to be served by the tenant on the landlord. I find that that previous order was issued based solely on mutual consent by the 2 parties and formed

part of the tentative settlement between them. I find that the service and enforcement of the earlier order was also premised on full compliance with all of the terms of the negotiated agreement by both parties and did not result from or comprise a decision or determination made by the presiding dispute resolution officer.

Accordingly, I find that the dispute over the return of the security deposit is not “*rez judicata*”, as this matter has not yet been heard on its merits. Therefore, I will disregard any and all terms of the mutual agreement stemming from the past hearing including the order issued. The hearing with respect to the tenant’s current application and the dispute before me, will proceed solely on the merits of the tenant’s application as if no past dispute resolution hearing decision was ever rendered nor settlement of any kind ever in effect.

Given the above, while I do not have the authority under the Act to cancel the previous monetary order issued, it follows that the tenant is not at liberty to serve nor enforce the prior monetary order dated March 7, 2011 that resulted from the negotiated settlement.

Issue(s) to be Decided

The issue to be determined, based on the testimony and the evidence is whether the tenant is entitled to double the return of the security deposit pursuant to section 38 of the Act.

Background and Evidence

The tenant testified that the rent was \$1,295.00 and a security deposit of \$647.50 and pet damage deposit of \$647.50 were paid at the start of the tenancy on May 1, 2010. The tenant testified that the tenancy ended on August 31, 2010 and the written forwarding address was provided to the landlord on September 10, 2010. The tenant testified that the landlord did not refund the deposit nor make application to retain it within 15 days of the receipt of the forwarding address. The tenant is therefore seeking a refund of double the security deposit in the amount of \$2,590.00 and the \$100.00 cost of making the applications. The tenant was also seeking compensation for other damages, including the cost of postage, mileage and loss of hours from work.

Analysis

In regard to the return of the security and pet damage deposits, I find section 38 of the Act is clear. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the written forwarding, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit. In this instance, the landlord repaid a portion of the deposit within the 15 days.

The Act states that the landlord can only retain a deposit without obtaining an order if the tenant agrees in writing that the landlord can keep it to satisfy a liability at the end of the tenancy. I find that the tenant did not give the landlord written permission to keep any part of the deposit, nor did the landlord make an application for an order to keep the deposit within the required 15 days.

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 must pay the tenant double the amount of the security deposit and pet damage deposit.

I find that the landlord's failure to pay back the entire amount of the deposit within the 15 day deadline would therefore entitle the tenant to double the deposit amounting to \$2,590.00 plus the \$100.00 cost of the applications. Accordingly, I find that the tenant is entitled to total monetary compensation of \$2,690.00.

The remainder of the tenant's claim, including travel and postage costs and loss of income must be dismissed as not falling under any provision of the Act, nor relate directly to the tenancy.

Conclusion

I hereby issue a monetary order to the tenant in the amount of \$2,690.00, which must be served on the Respondent in person or by registered mail. This order is final and binding 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: July 07, 2011.

Residential Tenancy Branch