



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of double the security deposit retained by the landlord.

Both the landlord and the tenant appeared and each 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 is whether the tenant is entitled to the return of double the security deposit pursuant to section 38 of the Act.

The burden of proof is on the applicant to prove the deposit was paid and not returned and that the landlord did not have authorization under the Act to keep it.

Background and Evidence

Both parties acknowledged:

- A deposit of \$200.00 was paid when the tenancy began in July, 2009
- The tenancy ended on January 31, 2011
- The tenant provided a written forwarding address in early March 2011.
- No written permission was given for the landlord to retain the security deposit.
- The landlord did not make application for an order to keep the deposit
- The deposit was not refunded after the end of the tenancy.

The landlord testified that on January 29, 2011, she advised the tenant that her daughter would be available to conduct the move-out inspection and collect the keys. The landlord testified that she received a letter from the tenant dated January 29, 2011 stating that she was not willing to have any further "interaction" with the landlord, including participating in a move-out inspection. The landlord testified that she then

called the tenant to set up a date for the condition inspection, but the tenant became verbally abusive and declined. The landlord stated that, by refusing to cooperate in two opportunities to schedule a move-out condition inspection, the tenant's right to make a claim for the return of the deposit has been extinguished under the Act and the landlord was therefore not required to make an application to keep the deposit within 15 days.

The tenant testified that the landlord did not propose a time to for a move out condition Inspection. The tenant testified that the landlord had only asked the tenant to meet to give back the keys. The tenant testified that the landlord also failed to complete a move-in inspection report at the start of the tenancy, and felt that this fact extinguished the landlord's right to claim against the security deposit.

Analysis

The Act states that the landlord can only retain a deposit if the tenant agrees to this in writing. 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. In the alternative, the landlord can obtain an order to retain part, or all, of the deposit by making application for dispute resolution within 15 days after the forwarding address was received. Based on the evidence, 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.

While I acknowledge that on a balance of probabilities the landlord did attempt to schedule a move out inspection and it is clear that the tenant declined to participate, I find that the landlord was required under the Residential Tenancy Regulation to offer the tenant a final opportunity for the inspection. Section 17 of the Regulation states that A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times and if the tenant is not available at a time first offered :

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form. (my emphasis)

The Regulation also requires that, when providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must both consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

I find that the landlord did not formally offer the tenant a final opportunity to participate in the inspection on the approved form and, in fact, took no further action thereafter except to merely retain the \$200.00 deposit, which is not permitted under the Act.

In addition, I find that the landlord's failure to conduct a move-in condition inspection and provide the tenant with a copy at the start of the tenancy had extinguished the landlord's right to claim against the deposit.

Section 38(6) of the Act provides that If a landlord does not comply with the Act by refunding the deposit or making application to retain it within 15 days of receiving the forwarding address, the landlord may not claim against the security deposit, and must pay the tenant double the amount of the deposit.

In regard to the landlords testimony and evidence defending the retention of the deposit, because of tenant's failure to clean or damages left by the tenant, I find that this is not the landlord's application and any evidence from the landlord relating to damages and loss cannot be heard nor considered at this hearing which was convened to deal with the *tenant's* application under section 38 of the Act. The landlord is at liberty to make its own application pursuant to section 67 of the Act.

In the matter before me, however, I find that, the tenant is entitled to be paid double the security \$200.00 deposit wrongfully retained by the landlord, in the amount of \$400.00.

Conclusion

Based on the testimony and evidence, I find that the tenant is entitled to compensation of \$400.00 and I hereby issue a monetary order for this amount 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: July 21, 2011.

Residential Tenancy Branch