



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 remainder of security deposit retained by the landlord.

Both the landlord and the tenant appeared along with representatives 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 that the deposit of \$685.00 was paid when the tenancy began in June 2005 and that the tenancy ended effective April 30, 2011. The forwarding address was received by the landlord at the end of the tenancy and on May 15, 2011 only \$449.60 was refunded.

The landlord testified that \$260.00 was retained for cleaning costs and had submitted a written statement about the history of the tenancy. The landlord also confirmed that the landlord's address shown on the tenant's Application for Dispute Resolution, was the landlord's correct service address.

The tenant testified that the landlord did not refund the deposit nor make an application to keep it within 15 days of receiving the address. The tenant is seeking compensation of double the security deposit under section 38(6)(b).

Analysis

Security deposits are funds held in trust by the landlord for the tenant. I find that section 38 of the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant dated at the end of the tenancy, then the landlord's right to merely keep the deposit does not exist.

However, at the end of a tenancy, a landlord is at liberty to make an application for dispute resolution seeking to keep the deposit to satisfy a liability or obligation of the tenant. In order to make such a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the tenancy ended and the forwarding address was received. 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.

The landlord had submitted a substantial amount of evidence with respect to damages for cleaning costs. However, I am not able to hear nor consider evidence with regard to any claims by the landlord relating to damages and loss because this hearing was convened solely to deal with the *tenant's* application under section 38 of the Act. That being said, I must point out that the landlord is still at liberty to make a separate application if the landlord decides to initiate a formal claim for compensation for damages and loss 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 \$690.00 security deposit plus interest of \$24.44 for a total of \$1,404.44.

The landlord has already refunded \$449.60 leaving \$954.84. I find that the tenant is also entitled to be reimbursed the \$50.00 the cost of filing the application for total monetary compensation owed of \$1004.84.

Conclusion

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order for \$1,004.84 in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and if necessary can be enforced as an order of that Court.

This decision is final and binding and was 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: August 26, 2011.

Residential Tenancy Branch