



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 retained by the landlord. The tenant and the landlord participated in the hearing by telephone. Both parties gave testimony.

Issue(s) to be Decided

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

Background and Evidence

The tenancy began on January 3, 2011 and a security deposit of \$950.00 was paid. The rent was set at \$1,900.00 per month. The tenancy ended on April 30, 2011. A copy of the tenancy Agreement was in evidence.

The tenant testified that the landlord failed to return the deposit within 15 days after the tenancy ended and written forwarding address provided. The tenant referred to correspondence that verified as of May 13, 2011, the landlord had the tenant's forwarding address.

The landlord testified that the tenant left condition problems in the suite and the landlord has made an application for dispute resolution scheduled to be heard on November 23, 2011 seeking compensation.

Analysis

With respect to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit only if the tenant gives written permission at the end of the tenancy or the landlord has obtained an order through dispute resolution to keep the deposit to satisfy a liability or obligation of the tenant.

However, in order to make a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

Based on the evidence and the testimony, I find that at the end of the tenancy the tenant did not give the landlord written permission to keep the deposit, nor did the landlord subsequently make an application seeking an order to keep the deposit within the 15-day deadline to do so.

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

With respect to the landlord's evidence, I was not able to hear the landlord's claim against the tenant during these proceedings because this hearing was convened to deal with the *tenant's* application under section 38 of the Act and that was the only matter before me. The landlord did not make a cross application in time for it to be heard together with the tenant's application. The landlord has made an application which will be heard in future and the landlord is at liberty to present his claim at that time.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the portion of the security deposit of \$950.00 that was wrongfully retained by the landlord, totalling \$1,900.00 plus the \$50.00 cost of filing the dispute resolution application.

Conclusion

Based on testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,950.00 and 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 Small Claims Court if necessary 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: September 14, 2011.

Residential Tenancy Branch