

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 the security deposit and the pet damage deposit retained by the landlord. Despite being served by registered mail sent on June 29, 2011, the respondent did not appear.

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 whether the tenant is entitled to the return of double the security and pet damage deposits pursuant to section 38 of the Act.

Background and Evidence

The tenant testified that the tenancy began on January 1, 2011 and ended on June 1, 2011. The tenant testified that the landlord was provided with a written forwarding address on June 9, 2011, but has not returned the \$400.00 security or \$400.00 pet damage deposits that were paid at the start of the tenancy. A copy of the tenancy agreement confirmed that the deposit of \$400.00 was paid when the tenancy began.

The tenant testified that, because 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. 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 in the form of photographs but did not attend.

This hearing, however, was to deal only with the tenant's application for the return of the deposit. In the matter before me, I find that under section 38, the tenant is entitled to be paid double the security deposit that was wrongfully retained by the landlord, in the amount of \$1,600.00.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,650.00 comprised of \$800.00 for double the security deposit, \$800.00 for double the pet damage deposit and the \$50.00 paid to file this application. I hereby issue a monetary order for \$1,650.00 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 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: September 29, 2011.

Residential Tenancy Branch