



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.

The tenant and the landlord participated in the hearing by telephone.

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 October 15, 2010 at which time a security deposit of \$350.00 was paid. Current rent was \$700.00 per month. The tenancy ended at the end of March 2011. The tenant testified that he had given the landlord a written forwarding address to forward his mail at the end of the tenancy.

The tenant testified that the unit was returned in good clean condition. The tenant testified that the landlord kept his security deposit without his permission and without obtaining an order under the Act to do so. The tenant is requesting the return of double the security deposit.

The landlord acknowledged that the deposit was paid but not returned to the tenant after the end of the tenancy. The landlord stated that he had no knowledge of any written forwarding address being provided by the tenant. The landlord testified that the rental unit was not left in a good condition when the tenant left.

Analysis : Claim for Return of Security Deposit

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 if the landlord has obtained an order through dispute resolution ordering that the landlord can 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 written permission to keep the deposit, nor did the landlord 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 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.

With respect to the landlord's own claim for damages and loss caused by the tenant, I found that I was not able to hear nor consider 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 is at liberty to make his own application to pursue a claim.

In the matter before me, however, I find that under section 38, the tenant is entitled to total compensation of \$750.00 comprised of \$700.00, which is double the security deposit of \$350.00 and the \$50.00 cost of the application.

Conclusion

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order in favour of the tenant for \$750.00. This order must be served on the respondent landlord 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: October 27, 2011.

Residential Tenancy Branch