



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for the return of all or part of the pet and or security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed that they had entered into a written month to month tenancy agreement that began on November 1, 2010 and ended around June 13, 2011 when the Tenant had removed the remainder of her possessions. Rent was payable on the first of each month in the amount of \$725.00 and on September 27, 2010 the Tenant paid \$362.50 as the security deposit. The Tenant provided her forwarding address, in writing, to the Landlord on or before June 13, 2011.

The Landlord affirmed she has not returned the security deposit, she has not made an application for dispute resolution to retain the security deposit, she does not have an Order granting her the authority to retain the security deposit, and she does not have the Tenant's written permission to keep the security deposit. The Landlord advised that the Tenant gave her verbal permission to keep the security deposit to cover the damage caused to the rental unit door.

The Tenant denied giving the Landlord verbal permission to retain the security deposit and requested the return of her full deposit.

Analysis

In order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act*.

The Landlord alleges she had a verbal agreement with the Tenant for the Landlord to retain the security deposit. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove she had the Tenant's written permission to retain the security deposit. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet the Landlord's burden of proof.

The evidence supports that the Landlord did not apply for dispute resolution to keep the security deposit, does not have an Order allowing her to keep the security deposit, and she does not have the Tenant's written consent to retain the security deposit. The tenancy ended on approximately June 13, 2011 and the Tenant's forwarding address was provided to the Landlord on or before June 13, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than June 28, 2011. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I find that the Tenant has succeeded in meeting the burden of proof. Accordingly I award the Tenant monetary compensation in the amount of **\$725.00**, which is comprised of double the security deposit (2 x \$362.50) plus interest of \$0.00.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$725.00**. This Order is legally binding and must be served upon the Landlord.

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: November 15, 2011.

Residential Tenancy Branch