



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an Application by the Tenant for a monetary order for return of the security deposit.

The Tenant provided affirmed testimony that she served the Landlord, by registered mail with the Application for Dispute Resolution and Notice of Hearing on October 12, 2011, and provided the tracking slip from Canada Post as evidence.

I find that the Landlord was served the Application and Notice of Hearing in accordance with section 88 of the *Residential Tenancy Act* (the "Act").

The Landlord did not participate in the conference call hearing. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

Background and Evidence

The Tenant testified that she paid a security deposit of \$250.00 when the tenancy commenced in April 01, 2004. The Tenant stated that the monthly rent was \$500.00 per month. The Tenant stated that the tenancy ended on August 31, 2011. The Tenant provided into evidence, in advance of the hearing, a copy of the receipt that she received from the Landlord stating that \$250.00 was paid on April 01, 2004 for a security deposit. The Tenant did not provide a copy of the tenancy agreement. The Tenant stated that the Landlord did not conduct a move-in or move-out inspection with her.

The Tenant stated that she provided the Landlord their forwarding address in writing on August 17, 2011. The Tenant stated that she did not receive the security deposit. The Tenant filed for dispute resolution on October 11, 2011 and was provided a Notice of Hearing package on October 12, 2011.

The Tenant is seeking return of the security deposit in accordance with the Act.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

Although the Tenant did not provide a copy of the tenancy agreement, she did provide a copy of the receipt for the \$250.00 security deposit received and signed for by the Landlord on April 01, 2004. This evidence supports the Tenant's position that a security deposit was paid when the tenancy commenced. The Tenant stated that she provided her written forwarding address to the Landlord when she moved out of the rental unit on August 17, 2011.

There was no evidence showing that the Landlord had returned the security deposit or that the Landlord applied for dispute resolution, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant.

As a result, the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep the security deposit. Therefore, I find that the Landlord is not entitled to retain the security deposit of \$250.00 plus interest.

Section 38(6) of the Act requires that a landlord pay a tenant double their security deposit if the landlord has failed to return the security deposit to the tenant within 15 days of receiving the tenant's forwarding address and has failed to apply for dispute resolution within that time frame. I find that the Tenant is entitled to \$508.85 which is double the security deposit (\$250.00) plus interest (\$8.85)

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of \$508.85, comprised of double the balance (\$250.00) of the security deposit and the interest (\$8.85).

The Tenant is granted a formal monetary order for **\$508.85** and the Landlord must be served with a copy of this order as soon as possible. Should the Landlord fail to comply with this order, the order may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

The order is attached to the Tenant's copy of this decision.

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: December 19, 2011.

Residential Tenancy Branch