



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of double his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package placed in his mail slot early in October 2011. I am satisfied that the landlord was served with this package by the tenant.

Issues(s) to be Decided

Is the tenant entitled to a return of his security deposit? Is the tenant entitled to a monetary award equal to his security deposit as a result of the landlord's failure to comply with section 38(1) of the *Act*? Is the tenant entitled to recover his filing fee or his application from the landlord?

Background and Evidence

This tenancy commenced as a six-month fixed term tenancy on July 1, 2009. At the expiration of the original fixed term, this converted to a periodic tenancy. Monthly rent was set at \$1,220.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$610.00 security deposit paid on June 20, 2009.

The parties agreed that the tenant vacated the rental unit by July 31, 2011. Following the end of this tenancy, the landlord confirmed that he received the tenant's forwarding address in the tenant's August 25, 2011 letter placed in his mail slot and received that date. The parties agreed that the landlord has not returned any portion of the tenant's security deposit. The landlord said that he had been planning to file an application for dispute resolution regarding damage that arose during this tenancy that would enable him to retain the tenant's security deposit, but has not done so as yet.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the tenant's security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the security deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit the triggering event is the latter of the end of the tenancy or the provision by the tenant of the forwarding address in writing. In this case, there is undisputed evidence that the tenant provided the landlord with his forwarding address in writing on August 25, 2011.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address in writing, has not filed for dispute resolution for authorization to retain the tenant's security deposit, and has no written agreement to retain the deposit. In accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary Order amounting to double the tenant's security deposit with interest calculated on the original amount only. No interest is payable over this period.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,270.00, which allows the tenant to recover his original \$610.00 security deposit, a monetary award equivalent to his \$610.00 security deposit for the landlord's failure to comply with section 38 of the *Act*, and to recover his \$50.00 filing fee for his application.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: December 16, 2011

Residential Tenancy Branch