



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 of \$562.50 and pet damage deposit of \$200.00 retained by the landlord.

Both the landlord and the tenant appeared and each gave testimony.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to the return the security deposit.

Background and Evidence

Both parties acknowledged that the security deposit of \$562.50 and pet damage deposit of \$200.00 were paid when the tenancy began on March 1, 2010 and that the landlord had attempted to refund a portion of the security deposit. A copy of a cheque from the landlord dated September 19, 2011 for \$197.50 was in evidence, along with the landlord's itemized list of damages.

The tenant testified that the refund cheque from the landlord was never cashed as they disagreed with the deductions that were made. The tenant is seeking double the return of the security and pet damage deposits and the cost of filing the application.

The landlord testified that the tenant had moved out without giving proper notice and had left significant damage in the unit, as well the need to clean the unit to re-rent it. The landlord testified that the costs for the repairs and cleaning were deducted and the \$197.50 remainder of the deposit was returned. The landlord testified that he was not aware that he would have to make an application and obtain an order to keep any portion of the deposit.

Analysis

The Act states that the landlord can only retain a deposit if the tenant agrees to this in writing. If the permission is not in written form and signed by the tenant, then the landlord's right to keep the deposit does not exist.

In the alternative, the landlord can obtain an order retain part, or all, of the deposit by making an application for dispute resolution within 15 days after the forwarding address was received. Based on the evidence, 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.

While I acknowledge that the landlord did offer to refund a partial amount of \$197.50 and the tenant refused this, I find that the landlord took no further action thereafter. I find that the landlord merely retained the remaining deposit, even after receiving the tenant's application and the tenant's address in early October 2011.

If the landlord's intent was to ensure that the tenant paid for alleged damage, the Act provides that the landlord has the option of making an application to claim for damages. Keeping the deposit or any portion of it constitutes a violation of section 38 of the Act.

Section 38(6) of the Act provides that If a landlord does not comply with the Act by refunding the deposit or making application to retain it within 15 days of receiving the forwarding address, the landlord may not claim against the security deposit, and must pay the tenant double the amount of the deposit.

In regard to the landlord's testimony and evidence defending his retention of the deposit on the basis of a damage claim, I find that the application before me is not that of the landlord and I am not able to hear nor consider the landlord's evidence about his own claims. This hearing was convened to deal with the *tenant's* application under section 38 of the Act. That being said, I must point out that the landlord is at liberty to make a separate application if the landlord wants to initiate a formal claim for compensation for damages and loss pursuant to section 67 of the Act.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the \$562.50 security and \$200.00 pet damage deposits withheld amounting to \$1,525.00 plus the \$50.00 cost of filing the application.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,575.00 and I hereby issue a monetary order for this amount 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 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 14, 2011.

Residential Tenancy Branch