



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, 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 met the requirements of the *Residential Tenancy Act* to retain the Tenant's security deposit?
2. If not, has the Tenant met the burden of proof to obtain a Monetary Order for the return of double her security deposit pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties entered into a month to month tenancy agreement that began on December 1, 2010 and ended May 13, 2011. Rent was payable on the first of each month in the amount of \$1,100.00 and on November 12, 2010 the Tenant paid \$550.00 as the security deposit.

The Tenant affirmed she sent her forwarding address to the Landlord via text message on May 28, 2011. The Landlord confirmed receiving the forwarding address around that time but he could not recall how it received it.

The Landlord had filed an application for dispute resolution to keep the security deposit on June 28, 2011 which was dismissed with leave to reapply on September 13, 2011. The Landlord has not filed another application to retain the security deposit.

Analysis

The parties agreed the Tenant provided the Landlord with her forwarding address on May 28, 2011 and the Landlord filed an application for dispute resolution on June 13, 2011 to retain the security deposit which was dismissed with leave to reapply.

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 13, 2011. The fifteenth day actually falls on June 12, 2011 which was a Sunday; therefore the deadline is put over to the next business day which is Monday June 13, 2011.

Based on the above, I find that the Landlord has not failed to comply with Section 38(1) of the *Act* and that the Landlord is **not** 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.

As per the aforementioned, I find that although the Landlord filed an application within the required time frame his application was dismissed with leave to reapply and he has made no effort to reapply to retain the deposit. Therefore the Landlord has no legal entitlement to retain the Tenant's security deposit. Accordingly, I award the Tenant return of her security deposit plus interest in the amount of **\$550.00** (\$550.00 + \$0.00 interest).

The Tenant has succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's application will be accompanied by a Monetary Order in the amount of **\$600.00**. (\$550.00 + \$50.00). 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: December 02, 2011.

Residential Tenancy Branch