

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, the return of all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

During the hearing, the Tenant stated that he wished to withdraw his application for monetary compensation and is now only seeking the return of double the security deposit.

Issue(s) to be Decided

Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

Neither party has submitted a signed tenancy agreement, but both agree that the monthly rent was \$950.00 and that a security deposit of \$450.00 was paid.

Both parties agreed that the Tenancy ended on September 30, 2011 and that the Landlord received the forwarding address in writing from the Tenant on November 3, 2011.

The Tenant states that the Landlord failed to return the security deposit after the end of the tenancy. Both parties agreed that the Landlord returned \$174.36 to the Tenant for the undisputed amount of the security deposit as shown on the copy of the cheque from the Tenant. The Landlord admits in his direct testimony that he did not return the full security deposit or file for dispute resolution within 15 days at the end of the tenancy or when he received the Tenant's forwarding address in writing.

Analysis

As both parties have attended the hearing and have made detailed reference to the evidence submitted by the other party, I am satisfied that each has been properly served with the notice of hearing and evidence packages.

Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) **the date the tenancy ends, and**

(b) **the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) **make an application for dispute resolution claiming against the security deposit** or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been

extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

The Landlord has admitted in failing to return the security deposit and not filing for dispute. On this basis, I find that the Tenant is entitled to the return of the outstanding \$275.64. The Tenant failed to provide his forwarding address in writing to the Landlord until November 3, 2011. As the Tenant filed for dispute prematurely before providing his forwarding address in writing to the Landlord, I find that the Tenant is not entitled to return of double the security deposit. The Tenant's application for double the security deposit is dismissed without leave to reapply.

The Tenant is entitled to the return of the \$50.00 filing fee. I grant the Tenant an order under section 67 for the balance due of \$325.64. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$325.64.

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: January 06, 2012.

Residential Tenancy Branch