



Dispute Resolution Services

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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 double the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the landlord?

Background and Evidence

The tenant paid a security deposit of \$400.00 on March 1, 2011. The tenant vacated the premises on August 1, 2011.

The tenant testified on December 13, 2011, she sent by registered mail a written letter to the landlord requesting the return of her security deposit and the letter provided the landlord with her forwarding address. The tenant further stated she did not sign over a portion of the security deposit. Filed in evidence is a copy of the tenant's written letter sent to the landlord. Filed in evidence is the Canada post tracking receipt.

The landlord's agent testified they did receive the tenants forwarding address. However, the security deposit was not returned as the tenant did not provide proper notice to end tenancy.

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.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit.

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 any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pays the tenant the sum of \$800.00, comprised of double the security deposit on the original amount (\$400.00) held.

The tenant is given a formal order in the above terms 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.

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: February 01, 2012.

Residential Tenancy Branch