



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Dispute Codes

MNSD

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit, and the filing fee for the claim.

The tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on January 18, 2012, a Canada post tracking number was provided as evidence of service, and the landlord did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

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 \$317.50 on July 23, 2010. The tenant vacated the premises on March 1, 2011.

The tenant testified that the landlord had her forwarding address, and returned a portion of the security deposit she paid; however, he withheld \$150.00. The tenant stated she did not give the landlord permission to retain \$150.00 of the security deposit.

The tenant testified that she recently received a cheque from the landlord in the amount of \$667.50. The tenant states that the cheque is postdated for February 29, 2012. However, she is seeking a monetary order to ensure that the landlord pays the amount owed.

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, plus interest.

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, plus interest.

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 pay the tenant the sum of **\$517.50**, comprised of double the security deposit (\$317.50) on the original amounts held, the \$50.00 fee for filing this Application and less the amount of \$167.50 previously returned to the tenant.

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 02, 2012.

Residential Tenancy Branch