



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, the interest and the filing fee for the claim.

The tenant served the landlord with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on December 18, 2011, a Canada post tracking number was provided as evidence of service, 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 \$550.00 on June 19, 2011. The tenant vacated the premises on October 23, 2011. On October 21, 2011, the tenant provided a letter to the landlord requesting the return of the security deposit and the letter provided the landlord with the tenants forwarding address.

The tenant further stated that he did agree in writing that the landlord could retain \$18.94 of the security deposit. However, the landlord has failed to returned the balance of the security deposit.

Filed in evidence is a copy of a bank document, which shows the security deposit was transferred by the tenant to the landlord's bank account on June 19, 2011, in the amount of \$550.00. Also, filed in evidence is a letter to the landlord dated October 21, 2011, which provides the tenants forwarding address.

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.

The evidence of the tenant was he agreed in writing that the landlord could retain \$18.94 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 the balance 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 only had the authority under the Act to keep \$18.94 of the security deposit. I find that the landlord was not entitled to retain the balance of the security deposit.

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 **\$1,131.06**, comprised of double the security deposit (\$550.00) on the original amount held, the \$50.00 fee for filing this Application and less the amount of \$18.94 that the tenant agreed the landlord could retain.

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 03, 2012.

Residential Tenancy Branch