



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 tenants for a monetary order for return of double the security deposit and the filing fee for the claim.

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 \$ 885.00 and a pet deposit of \$250.00 on June 11, 2009. The Tenant vacated the premises on August 29, 2011. The Tenant provided the landlord with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The male tenant testified the landlord make an application for a monetary order and to retain the security deposit and pet deposit, a hearing was held on November 28, 2011 and the landlord did not appear and the decision at the Dispute Resolution hearing was the landlord's application was dismissed without leave to re-apply.

The male tenant testified that on February 21, 2012, the landlord did return the original balance of the security deposit and pet deposit and are still seeking to be compensated at the rate of double that amount.

The landlord testified that she had a problem with the property manager was not informed of the original date.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord has breached 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.

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. However, the landlord did not appear at the hearing on November 28, 2011 and the landlords claim for damages and to retain the security deposit and pet deposit was dismissed without leave to re-apply.

The landlord at that point had an obligation to return the security deposit and pet deposit to the tenants. The tenants then filed an application for return of the deposit at the rate of double on December 20, 2011 and the landlord still did not return the tenants security deposit and pet deposit until February 21, 2012.

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 tenants. 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 tenants the sum of \$2,270.00, comprised of double the pet deposit (\$250.00) and security deposit (\$885.00) of the original amounts held.

As the landlord has returned the original amount of \$1,135.00 of the security deposit (\$885.00) and pet deposit (\$250.00), the tenants are entitled to a monetary order in the amount of **\$1,185.00**, for the balance due and the \$50.00 fee for filing this application.

The tenants are 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 29, 2012.

Residential Tenancy Branch