



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord.

Although served with the Notice of Hearing and application by registered mail sent on November 21, 2011, the landlord did not appear and the hearing proceeded in the absence of the landlord.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit of \$800.00 and the pet damage deposit of \$200.00 paid at the start of the tenancy on September 1, 2010.

The issue to be determined, based on the testimony and the evidence, is whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act.

The burden of proof is on the applicant to show that the deposit was paid and that the forwarding address was given.

Background and Evidence

The tenant testified that the tenant had moved into the unit on September 1, 2010 and paid a security deposit of half a month rent in the amount of \$600.00 plus a pet damage deposit of \$200.00 and moved out of the unit on August 31, 2011. The tenant testified that the forwarding address was given to the landlord in writing prior to vacating and submitted copies of email communications between the tenant and the landlord with respect to the return of the deposits. The tenant testified that the landlord refused to return the deposit and kept the funds without making any application for an order to retain the deposit. The tenant is requesting double the deposit wrongfully retained by the landlord.

Analysis

With respect to the return of the security deposit and pet damage deposit, I find that section 38 of the Act provides that, within 15 days after the later of the day the tenancy ends, and the date the tenant's written forwarding address has been received, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant. the landlord can also retain the deposit for a debt if an order has been obtained by the landlord after the end of the tenancy.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposits.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit and pet deposit amounted to \$800.00 and that under the Act the tenant is entitled to \$1,650.00. This represents \$1,600.00 for double the deposits and the \$50.00 fee paid by the tenant for this application.

Conclusion

I hereby issue a monetary order to the tenant in the amount of \$1,650.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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 07, 2012.

Residential Tenancy Branch