

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant submitted 7 pages of evidence with their application. The Landlord has acknowledged receiving the notice and evidence package. The Landlord has not filed any evidence. As such, I am satisfied that both parties have properly been served with the notice of hearing and evidence under the Act.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agree that this Tenancy ended on October 31, 2011, that the security deposit of \$1,000.00 was paid and that the Landlord received the forwarding address in writing by registered mail sent on November 23, 2011.

The Tenant is seeking the return of the \$1,000.00 security deposit and compensation of \$1,000.00 equal to the security deposit because the Landlord failed to return it. The Landlord confirms not returning the security deposit because of issues from the tenancy.

Analysis

Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

Based upon the direct testimony of both parties, I find that the Landlord failed to return the security deposit within 15 days of the later of the end of tenancy on October 31, 2011 and November 23, 2011 when the Landlord received the forwarding address in writing from the Tenant. The Landlord also did not file for dispute for the security deposit. The Tenant has established a claim for compensation of \$2,000.00. This consists of \$1,000.00 equal to the security deposit amount as compensation and the return of the \$1,000.00 security deposit. The Tenant is also entitled to the recovery of the \$50.00 filing fee. I grant a monetary order under section 67 for the Tenant in the amount of \$2,050.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$2,050.00.

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: March 07, 2012.

Residential Tenancy Branch