



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for return of double the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

I heard undisputed verbal testimony as to the following information:

- The verbal tenancy agreement commenced March 15, 2011;
- The landlord collected a \$100.00 security deposit;
- The monthly rent was \$400.00 due on the 1st of every month;
- The tenant gave the landlord a written notice to end tenancy on July 29, 2011 with an effective date of August 31, 2011 complete with a "future address" for the tenant;
- The tenant vacated the rental unit and a new tenant began occupying the rental unit in August 2011;
- The landlord is still in possession of the tenant's security deposit;
- The tenant did not authorize the landlord to make any deductions from the security deposit in writing; and,
- The landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The tenant stated he paid rent for August 2011. The landlord claims he refunded the rent he received on behalf of the tenant to Income Assistance. As the tenant was not seeking return of rent for August 2011 I did not hear any further submission on this point.

The tenant is seeking return of double the security deposit due to the landlord's failure to comply with the Act with respect to handling the security deposit.

The landlord explained that he withheld the security deposit because he had to clean the unit and have keys re-cut.

Analysis

The landlord's submissions regarding cleaning and key costs were not issues for me to decide for this proceeding as the landlord had not made an Application for Dispute Resolution. The purpose of this hearing was to hear the tenant's application and determine whether the landlord complied with the Act with respect to handling of the security deposit. The landlord remains at liberty to make a separate application for damages within two years of the tenancy ending.

Deductions from the security deposit may be made by the landlord in limited circumstances but the landlord must either obtain the tenant's written consent or the authorization from a Dispute Resolution Officer. The landlord did not have such authorization in this case. Accordingly, the landlord was obligated to comply with section 38(1) of the Act.

Section 38(1) of the Act requires the landlord to either return the security deposit to the tenant or make an Application for Dispute Resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Where a landlord violates section 38(1) of the Act, the security deposit must be doubled pursuant to section 38(6) of the Act.

Upon consideration of the evidence before me, I find the tenant did provide the landlord a forwarding address in the letter he gave to the landlord on July 29, 2011. I find the landlord has not complied with section 38(1) of the Act, therefore, section 38(6) applies and the tenant is entitled to return of double his security deposit.

As the tenant was successful with this application, I also award the filing fee to the tenant.

Provided to the tenant with this decision is a Monetary Order in the total amount of \$250.00 to serve upon the landlord and enforce as necessary. The Monetary Order may be enforced in Provincial Court (Small Claims) an Order of that court.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$250.00 to serve upon the landlord.

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 20, 2012.

Residential Tenancy Branch