

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 the recovery of the filing fee.

The Tenant's Agent attended the hearing by conference call and gave undisputed testimony. The Landlord did not attend. The Tenant's Agent states that the Landlord was served with the notice of hearing documents by Canada Post Registered Mail on February 10, 2012 and refused receipt of the package. The Tenant has provided as evidence a copy of the Registered Mail Receipt and Envelope. As such, I am satisfied that the Landlord was properly served under the Act and the Landlord by refusing acceptance of the package is deemed served.

It was clarified at the beginning of the hearing that the Tenant is Hester Hutton and not Holly Hutton. The later is the Tenant's daughter who is acting as an agent for her mother. The application shall be amended to reflect the Tenant's name and address.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for the return of double the security deposit?

Background and Evidence

The Tenant's agent states that the Tenancy ended on December 27, 2011 after the Landlord was given notice to end the tenancy on November 21, 2011 by email. The Tenant's Agent states that this was followed up in a letter on January 13, 2012. The Tenant's Agent states that she provided to the Landlord a forwarding address in writing for the security deposit in a letter on January 13, 2012. The address provided is the Tenant's Agents address as her mother is now residing with her. The Letter provided by the Tenant's Agent was witnessed by a W. G. As being delivered to the Landlord on January 13, 2012.

The Tenant's Agent states that the security deposit is \$525.00 and that she seeks the return of double the deposit in a monetary order under the provisions of the Act.

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.

I accept the Tenant's Agent's undisputed testimony that the Landlord failed to return the security deposit within 15 days of the end of the tenancy and being provided the Tenant's forwarding address in writing and has not filed for dispute resolution against the security deposit. The Landlord has not returned the \$525.00 security deposit to the Tenant nor have they filed an application for dispute over the security deposit under subsection (1). Pursuant to subsection (6) the Landlord must pay to the Tenant an amount equal to double the security deposit of \$525.00. I order that the Landlord pay \$1,050.00 to the Tenant. The Tenant is also entitled to the recovery of the \$50.00 filing fee. I grant the Tenant a monetary order under section 67 for \$1,100.00. 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 \$1,100.00.

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: April 16, 2012.

Residential Tenancy Branch