

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.

The Tenant attended the hearing by conference call and gave undisputed testimony. The Landlord did not attend. The Tenant states that the Landlord was served with the notice of hearing and evidence package by Canada Post Registered Mail on April 4, 2012, but has not submitted any documentary evidence as proof of service. The Tenant provided oral testimony of a Canada Post Registered Mail Tracking Number as confirmation that the Landlord was served. As such, I find based upon the undisputed testimony of the Tenant that the Landlord was properly served with the notice of hearing and evidence by registered mail under the Act.

Issue(s) to be Decided

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

Background and Evidence

The Tenant states that the Tenancy ended on January 28, 2012 and he security deposit of \$365.00 was paid to the Landlord. The Tenant states that he provided the Landlord with his forwarding address in writing on March 6, 2012 by Canada Post Registered and has submitted a copy of the letter and the Canada Post Registered Mail Customer Receipt as evidence.

Analysis

Section 38 of the Residential Tenancy Act speaks to the return of the security deposit and 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 find based upon the undisputed testimony of the Tenant that the Landlord failed to return the security deposit of \$365.00 nor file for dispute over the security deposit within the allowed 15 days from which the later of the two (end of tenancy date and the date the forwarding address in writing was received by the Landlord) on March 6, 2012. The Landlord is deemed served by registered mail 5 days later on March 11, 2012. The Tenant has established a claim for the return of double the security deposit under section 38 (6) of the Residential Tenancy Act of \$730.00 (\$365.00 X 2). The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary for \$780.00. 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 \$780.00.

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 18, 2012.

Residential Tenancy Branch