



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for return of double the security deposit and the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the landlord?

Background and Evidence

The tenancy began on July 1, 2009. Rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$350.00 was paid by the tenant. The tenancy ended on September 1, 2011.

The landlord had written notice of the tenants forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The evidence of the tenant was the landlord has not returned her security deposit and had not authority under the Act to retain the deposit.

The evidence of the landlord was there was an administrative error and the tenant's security deposit has not been returned.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord has breached the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit, plus interest.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the tenant. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pays the tenant the sum of \$750.00, comprised of double security deposit (\$350.00) on the original amounts held, and the \$50.00 fee for filing this application.

The tenant is given a formal Order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the Small Claims division of the Provincial Court 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: April 12, 2012.

Residential Tenancy Branch