



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD

Introduction

This hearing dealt with an application by the tenant for an order for the return of their security deposit. The tenant participated in the conference call hearing and the landlords did not. The tenant testified they had served the landlords with the application for dispute resolution and notice of hearing by registered mail but did not possess a tracking number for the mail; and, that it had not been collected by the landlord. I found that they had been deemed served with notice of the claim against them and the hearing proceeded in their absence.

Issue(s) to be Decided

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

Background and Evidence

The tenant's undisputed evidence is as follows. The tenant paid a \$375.00 security deposit in October 2011. The tenancy ended on January 31, 2012. The landlord did not conduct a move out condition inspection with the tenant. The tenant further testified they sent the landlord their forwarding address by registered mail on January 29, 2012 but did not possess a tracking number for the mail.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. The tenant has not provided sufficient evidence they sent the landlord their forwarding address in writing. I also find that in the absence of a condition inspection at the end of the tenancy, the landlord's right to make a claim against the deposit has been extinguished, while I find that the tenant's right to the return of the security deposit have not been extinguished.

Residential Tenancy Policy Guideline #17, in part, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

The landlord currently holds a security deposit of \$375.00. The undisputed evidence in this matter is that since the landlord is not permitted to claim the deposit, the landlord may not keep the deposit. Therefore, it is appropriate that I order the return of the tenant's original security deposit in the amount of \$375.00 to the tenant.

Conclusion

I grant the tenant an Order under section 67 for **\$375.00**. If necessary, this order may be registered in the Small Claims Court and enforced as an order of that court.

This Decision is final and binding on both parties.

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: May 22, 2012

Residential Tenancy Branch