



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction

This is an application by the tenant for a monetary order for return of the security deposit.

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

Is the tenant entitled to the return of the security deposit paid to the landlord?

Background and Evidence

The tenant paid a security deposit of \$800.00, pet deposit of \$800.00 and a carpet deposit of \$450.00. The tenancy agreement ended January 31, 2012.

The tenant testified the landlord returned the pet deposit and carpet deposit, however, the security deposit was not returned and they did not sign over a portion of the security deposit. The tenant stated the landlord had their forwarding address prior to leaving the rental unit and it was also provided in the application for dispute resolution filed on May 4, 2012.

The landlord testified they were unaware of the tenant's forwarding address until they received the tenant's application for dispute resolution. The landlord stated they did not return the deposit as the tenant caused damage to the rental unit. The landlord stated they did not apply for dispute resolution to retain the security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities.

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

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit, plus interest.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

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. 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 **\$1,600.00** comprised of double the security deposit (\$800.00).

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: June 29, 2012.

Residential Tenancy Branch