

DECISION

Dispute Codes MNSD, MNDC

Introduction

This is an application filed by the Tenant for a monetary order for the return of double the security deposit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed the receipt of the evidence package submitted by the other party, I am satisfied that each has been properly served as deemed under the Act.

Issue(s) to be Decided

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

Background, Evidence and Analysis

Both parties have agreed that the Tenancy began on December 4, 2010 and ended on April 26, 2012 because of a fire rending the rental unit uninhabitable. Both parties further agree that a security deposit of \$357.50 was paid at the beginning of the tenancy sometime in April of 2004. The Tenant states that she gave her forwarding address in writing to the Landlord on May 2, 2012 by way of an email and fax sent on the same date. The Landlord has confirmed receipt of this letter dated May 2, 2012. The Landlord confirms that the security deposit was not returned because of the nature of the fire and did not file for dispute to retain the security deposit.

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.

Based upon the direct testimony of both parties, I find that the Landlord has failed to comply with the Act by returning the security or for filing for dispute. The Tenant has established her claim for a monetary order for the return of double the security deposit. The Tenant is entitled to \$727.66 consisting of the original \$357.50 security deposit, accrued interest of \$12.66 and the award of an amount equal to the security deposit of \$357.50. The Tenant is granted a monetary order for \$727.66.

Conclusion

The Tenant is granted a monetary order for \$727.66.

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 25, 2012.

Residential Tenancy Branch