

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for the return of the security deposit, an amount equal to 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 June 6, 2012. The Tenant states that the package was returned by Canada Post as the package was refused by the Landlord. The Tenant has included a copy of the Customer Registered Mail Receipt and a copy of the envelope as evidence. As such, I am satisfied that the Landlord was properly served with the notice of hearing and evidence packaged as deemed under the Act. The Landlord has chosen to not participate in the hearing.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

The Tenant states that a \$1,000.00 deposit was paid to the Landlord on March 29, 2012 as shown by the submitted copy of receipt. The Tenancy was to begin on April 21, 2012. On April 1, 2012 the Tenant gave notice to the Landlord that she would not be starting the occupation of the rental unit. The Tenant states that the Landlord returned only \$550.00 and retained the remaining \$450.00 of the \$1,000.00 deposit. Tenant states that there was a tenancy agreement, but that nothing was in writing. The Tenant stated in her direct testimony that she did not provide her forwarding address in writing to the Landlord for the return of the security deposit.

The Tenant seeks a monetary order for \$1,450.00 consisting of the outstanding \$450.00 not returned and an additional \$1,000.00 as an amount equal to the security deposit for not complying with the Act.

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 has failed to return the outstanding \$450.00 amount from the \$1,000.00 security deposit. I grant the Tenant a monetary order for the return of the outstanding \$450.00. The Landlord has not returned the outstanding amount nor have they applied for dispute resolution to keep the amount. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The Tenant's direct testimony indicates that she did not provide a forwarding address in writing to the Landlord for the purpose of returning the security deposit. On this basis, I find that the Tenant is not entitled to compensation equal the security deposit. This portion of the Tenant's application is dismissed.

The Tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

The Tenant is granted a monetary order for \$500.00.

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: July 06, 2012.

Residential Tenancy Branch