



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of double the security deposit retained by the landlord.

The tenant and the landlord participated in the hearing by telephone.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of double the security deposit pursuant to section 38 of the Act.

Background and Evidence

The tenancy began on August 1, 2009 at which time a security deposit of \$550.00 was paid. Current rent was \$1,100.00 per month. The tenancy ended at the end of March 2012 and the landlord received the tenant's written forwarding address after that date.

The tenant testified that the landlord had refunded some money that was owed under an agreement between the parties involving the tenant showing the unit to prospective purchasers. The tenant testified that the landlord did not refund her security deposit and kept the deposit without written permission and without obtaining an order under the Act to do so. The tenant is therefore requesting the return of double the security deposit.

The landlord acknowledged that the deposit was paid but not returned to the tenant after the end of the tenancy. The landlord stated that he was not aware of the requirement under the Act to either refund the deposit or make a formal application claiming damages to keep it. The landlord testified that he had intended on making a case for damages during this hearing.

Analysis

With respect to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit only if the tenant gives written permission at the end of the tenancy, or if the landlord has obtained an order through dispute resolution ordering that the landlord can keep the deposit to satisfy a proven liability or obligation of the tenant.

However, in order to make a claim against the deposit, the landlord's application for dispute resolution should be filed within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

Based on the evidence and the testimony, I find that at the end of the tenancy the tenant did not give written permission to keep the deposit, nor did the landlord make an application seeking an order to keep the deposit within the 15-day deadline to do so.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

With respect to the landlord's own claim for damages and loss caused by the tenant, I found that I was not able to hear nor consider the landlord's claim against the tenant during these proceedings, because this hearing was convened to deal with the *tenant's* application under section 38 of the Act and that was the only matter before me. The landlord is at liberty to make his own application to pursue a claim for damages if he decides to do so.

In the matter before me, however, I find that under section 38, the tenant is entitled to total compensation of \$1,150.00 comprised of \$1,100.00, which is double the security deposit of \$550.00 and the \$50.00 cost of the application.

Conclusion

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order in favour of the tenant for \$1,150.00. This order must be served on the respondent landlord and may be filed in the Provincial Court (Small Claims) 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: July 04, 2012.

Residential Tenancy Branch