



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 the remainder of the security deposit retained by the landlord. Both the landlord and the tenant appeared and each gave testimony.

Issue(s) to be Decided

The issues to be determined based 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 as a one-year fixed term on October 1, 2011 but the tenant moved out on March 31, 2012. Both parties acknowledged that a security deposit of \$1,250.00, a pet damage deposit of \$200.00, and a \$200.00 key fob deposit were all paid by the tenant, totaling \$1,650.00. Both parties also agreed that the landlord gave a partial refund of \$1,345.00 and that this occurred more than 15 days after the end of the tenancy and receiving the written forwarding address from the tenant.

The tenant testified that the landlord did not refund the deposit nor make an application to keep it within 15 days of receiving the address. The tenant is seeking compensation of double the security deposit under section 38(6)(b).

The landlord testified that a portion of the deposit was retained for a \$100.00 move-in/move-out fee imposed by the strata, \$112.00 cleaning and \$168.00 carpet cleaning costs. The landlord acknowledged that this was done without an order or written permission from the tenants. The landlord pointed out that the tenant broke the lease agreement. The landlord also stated that, although he was the rental agent for the owner during the tenancy, he has since ceased being an agent for the landlord/owner.

Analysis

Security deposits are funds held in trust by the landlord for the tenant. I find that section 38 of the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form signed over by the tenant dated at the end of the tenancy, there is no right to keep the deposit.

However, a landlord is at liberty to apply for dispute resolution to keep the deposit to satisfy a liability or obligation of the tenant, which must be filed within 15 days after the forwarding address was received. Based on the evidence and the testimony, I find that no written permission was given to keep the deposit, nor did the landlord make application for an order to keep the deposit within the time permitted to do so.

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

The landlord had submitted a substantial amount of evidence with respect to an apparent claim for compensation for costs incurred. However, I am not able to hear nor consider the landlord's evidence relating to damages during this proceeding because the hearing before me was convened solely to deal with the *tenant's* application under section 38 of the Act. That being said, the landlord is still at liberty to make a separate application if the landlord decides to initiate a formal claim for compensation for damages and loss pursuant to section 67 of the Act.

In the matter before me, however, I find that, under section 38, the tenant is entitled to be paid double the \$1,650.00 security deposit for a total refund of \$3,300.00. The landlord has already refunded \$1,345.00 leaving \$1,955.00 still owed. I find that the tenant is also entitled to be reimbursed the \$50.00 the cost of filing the application for total monetary compensation awarded against the landlord in the amount \$2,005.00.

Conclusion

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order for \$2,005.00 in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and if necessary can be 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 17, 2012.

Residential Tenancy Branch