



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy commenced April 1, 2009 and the tenant paid a \$500.00 security deposit. A move-in inspection report was not prepared by the landlord. The tenancy ended May 31, 2012. The tenant sent a forwarding address, in writing, to the landlord via registered mail on June 6, 2012. The landlord's agent received an email with the tenant's forwarding address on June 11, 2012. In response to receiving the forwarding address the landlord's agent sent the tenant a letter advising her that the security deposit would not be refunded. The tenant did not authorize any deduction from her security deposit.

The tenant has applied for return of double the security deposit.

The landlord's agent submitted that the security deposit was not refunded because the landlord had to pay \$515.81 to the strata council for damage to the common hallway allegedly caused by the tenant. Although the landlord had requested the tenant pay this cost the tenant did not and the landlord withheld the security deposit.

The tenant was of the position she was not responsible for paying the damage to the common hallway and did not agree to any deductions from her award.

Analysis

As the parties were informed during the hearing, the landlord's submission that the tenant is responsible for the landlord's loss of \$515.81 was not an issue for me to decide as the landlord had not filed an Application for Dispute Resolution against the tenant. The purpose of this hearing was to determine whether the landlord complied with the Act with respect to the security deposit. The landlord retains the right to make a separate application for damages or loss.

Section 38 of the Act provides for the return of security deposits. Unless a tenant has extinguished their right to the security deposit, a landlord must have the tenant's written consent or the authorization of a Dispute Resolution Officer to make deductions from a security deposit. In this case, the landlord did not have such authorization and I was not presented any evidence to suggest the tenant's right to the security deposit was extinguished.

Under section 38(1), the landlord has 15 days, from the date the landlord receives the forwarding address or the date the tenancy ended, whichever date is later, to either return the security deposit to the tenant or file an Application for Dispute Resolution claiming against the security deposit.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

Based upon the evidence before me, I find the landlord was in receipt of the tenant's forwarding address in writing and the landlord failed to comply with section 38(1) of the Act. Therefore, the landlord must now pay the tenant double the security deposit.

As the tenant was successful in this application, the tenant is awarded the filing fee paid for making this application.

I provide the tenant with a Monetary Order in the total amount of \$1,050.00 including recovery of the filing fee.

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$1,050.00 to serve upon the landlord and enforce as necessary.

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: September 13, 2012.

Residential Tenancy Branch