

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by the Tenant of a monetary order for the return of double 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 hearing or submit any documentary evidence. The Tenant states that the Landlord was sent the notice of hearing and evidence package by Canada Post Registered Mail on August 1, 2012 and has submitted a copy of the Customer Receipt as confirmation. The Tenant states that the package was unclaimed by the Landlord and was returned by Canada Post. The Tenant confirms that address used was based upon the 2 month notice to end tenancy issued by the Landlord on April 1, 2012. I accept the undisputed evidence of the Tenant and find that the Landlord was properly served with the notice of hearing and evidence package on August 1, 2012 by Canada Post Registered Mail and find that the Landlord was properly served.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy began on June 1, 2004 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The Tenancy ended on June 30, 2012 after the Tenant received a 2 month notice to end tenancy for Landlord's use on April 1, 2012. The security deposit of \$482.50 was paid on June 1, 2004.

The Tenant has provided a copy of a letter dated May 28, 2012 which provides to the Landlord her forwarding address in writing. The Tenant states that this letter was sent by Canada Post Registered Mail on May 28, 2012 and has provided a copy of the Customer Receipt as confirmation of delivery. The Tenant states that as of the date of this hearing she has not received any communication from the Landlords and have not received 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.

I find based upon the undisputed testimony of the Tenant that the Landlord has failed to return the \$482.50 security deposit within 15 days of the end of tenancy on June 30, 2012. As of the date of this hearing no application for dispute has been filed by the Landlord. The Landlord is in contravention of the Act and the Tenant has established a claim for the return of the security deposit pursuant to Section 38 (1) and as well has established a claim for the return of an amount equal to the security deposit pursuant to Section 38 (6). The Tenant has established a monetary claim for \$965.00 (\$482.50 X 2) and \$17.09 for the accrued interest to date for the original \$482.50 security deposit. The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary order under section 67 for the balance due of \$1,032.09. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$1,032.09.

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: October 19, 2012.

Residential Tenancy Branch