



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit, compensation for loss under the Act, and the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?
Is the tenant entitled to a monetary order for compensation for loss under the Act?
Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The tenant paid a security deposit of \$125.00 on April 1, 2012. The tenant vacated the premises on May 31, 2012. The tenant provided the landlord with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The tenant stated she also seeks compensation for placing stop payments on her rent cheques.

The landlord stated he had no opportunity to return the cheques prior to the stop payments being placed on them and destroy the cheques by shredding after the tenant provided him a copy of the stop payments.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlords have breached the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlords could retain any portion of the security deposit.

There was also no evidence to show that the landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit.

The landlords have breached section 38 of the Act. The landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer. Here the landlords did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue. Therefore, I must order, pursuant to section 38 and 67 of the Act, that the landlords pay the tenant the sum of **\$250.00**, comprised of double security deposit (\$125.00).

The tenant is seeking compensation for the cost of stop payments fees on her rent cheques, however, the stop payments were placed on the rent cheques on April 23 2012, prior to the tenancy ending and the landlord was not given an opportunity to return the cheques to the tenant. I find the tenant has failed to prove the landlord has violated the Act. The tenant is not entitled to compensation for stop payment fees. The landlord has stated when he received the notice of stop payments from the tenant that he disposed of the cheques by way of shredding.

I find that the tenant has established a total monetary claim of **\$300.00** comprised of the above described amount and the \$50.00 fee paid for this application.

Conclusion

The tenant is given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with this order, the order may be filed in the small claims division of the Provincial Court 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: October 01, 2012.

Residential Tenancy Branch