

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the notice of hearing and submitted evidence, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

Both parties agreed that the Tenancy ended in June of 2012. A security deposit of \$375.00 was paid on March 28, 2006. The Tenant states that the Landlord was given his forwarding address in writing at the beginning of August 2012. Both parties agreed that the Landlord has not returned the security deposit as of the date of this hearing. The Landlord stated that he has not applied for dispute resolution to dispute the return of the security deposit because he states that there was damage left to the unit and unpaid rent and was entitled to retain it for money owed. The Tenant disputes this.

The Tenant seeks the return of the \$375.00 security deposit and pursuant to section 38 of the Residential Tenancy Branch an amount equal to the security deposit for failing to comply with the Act.

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.

Based upon the undisputed testimony of both parties, it is clear that the Landlord did not comply with Section 38 (1) of the Act and that Section 38 (6) should be applied. I am satisfied that the Landlord did not return the \$375.00 security deposit within 15 days of the end of the tenancy and did not apply for dispute resolution to dispute the return. The Landlord did not have permission to retain the deposit. The Landlord has established a claim for \$750.00. The Tenant is also entitled to \$12.82 in accumulated interest to date for the original \$375.00 security deposit since March 28, 2006. The Tenant is entitled to recovery of the \$50.00 filing fee.

I grant a monetary order under section 67 for the balance due of \$812.82. 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 \$812.82

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: November 16, 2012.

Residential Tenancy Branch