



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, the interest 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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

The tenant paid a security deposit of \$800.00 on April 15, 2010. The tenant vacated the premises on May 31, 2012. On May 31, 2012, the tenant provided the landlord with a written notice of the forwarding address to return the security deposit to, and gave the landlord to retain the amount of \$210.01 from the security deposit.

The landlord acknowledged they did not return any portion of the tenant's security deposit and that they did not file an application for dispute resolution.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any amount over \$210.01 from the security deposit.

There was also no evidence to show that the landlord 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 greater than the amount specified by the tenant in writing.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has 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 landlord did not have any authority under the Act to keep any portion greater than what was consent to by the tenant in writing. Therefore, I find that the landlord was not entitled to retain any portion of the security deposit that was greater than the amount of \$210.01.

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.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of \$1,650.00, comprised of double the security deposit (\$800.00) the original amount held and the \$50.00 fee for filing this Application.

However, the landlord was given permission to retain \$210.01, that amount will be deducted from the monetary claim and I grant the tenant an order for the balance due of **\$1,439.99.**

Should the landlord 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.

Conclusion

The tenant is granted a monetary order in the above amount.

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 08, 2012.

Residential Tenancy Branch