



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both, the tenant and the landlord were represented at today's hearing

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed facts before me are as follows. The tenancy began on November 30, 2011 and ended on September 01, 2012. The landlord collected a security deposit of \$475.00 at the outset of the tenancy and still retains it in trust. There is no evidence that a move out inspection was conducted at the end of the tenancy in compliance with the Act. The landlord testified they offered the tenant an opportunity to participate in an inspection, but did not offer the tenant a second opportunity in writing as required by the Act and Regulations. Regardless, the parties agreed that there was *no move in inspection* conducted at the outset of the tenancy.

The tenant claims that on the last day of the tenancy they provided the landlord with a written forwarding address, which the landlord denies receiving. The tenant has not provided proof in support of their assertion they provided a written forwarding address.

Analysis

The burden of proof in this matter lies with the applicant (tenant). On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

Section 38 of the Act provides, in part, as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

And

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

In this matter I find the tenant's testimony regarding provision of the forwarding address as ambiguous and unsupported by evidence. Therefore, the tenant **is not** entitled to double the original amount of the deposit as per Section 38 of the Act.

Section 24 of the Act, in part states as follows (**emphasis for ease**)

Consequences for tenant and landlord if report requirements not met

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property **is extinguished** if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord *did not* conduct or complete a condition inspection report at the beginning of the tenancy in concert with the Act or Regulations and is therefore precluded from making a claim to retain the deposit.

Therefore, as the landlord's right to claim against the deposit has been extinguished, it is only appropriate that I Order the landlord to return the deposit to the tenant in the full amount of **\$475.00**. The tenant is further entitled to recovery of the **\$50** filing fee for this application for a total entitlement of **\$525.00**.

Conclusion

I grant the tenant a Monetary Order under section 67 for the sum of **\$525.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: December 06, 2012

Residential Tenancy Branch