



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 and have confirmed receipt of the 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 have agreed that a \$750.00 security deposit was paid and that the Tenancy ended on either September 30, 2012 or October 1, 2012. The Tenant states that he provided his forwarding address in writing to the Landlord sometime during the month of October. The Landlord has confirmed that he received the Tenant's forwarding address in writing, but can only confirm that it was received sometime in October 2012. The Landlord has stated that he has not returned the security deposit nor has he filed for dispute resolution to keep the deposit because damage that he claims the Tenant caused in the rental.

Section 38 of the Residential Tenancy Act speaks to the return of a security 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 am satisfied based upon the direct testimony of both parties that the Landlord failed to comply with Section 38 of the Act by repaying the security deposit or filing for dispute resolution to keep it within the allowed timeframe. As such, the Landlord pursuant to Section 38 (6) must pay the Tenant double the security deposit.

The Tenant has established a claim for the return of double the security deposit of \$1,500.00. The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary order for \$1,550.00. 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 \$1,550.00.

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: January 23, 2013

Residential Tenancy Branch

