



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and this evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to the return of the security and pet damage deposit pursuant to section 38 of the Act?

Preliminary Matter

At the outset of the hearing the landlord challenged my jurisdiction on the basis that, in the past, she was told by Residential Tenancy Branch that the tenancies she arranged in her home were not governed by the Residential Tenancy Act.

The landlord testified that the tenant only rented a room with use of common areas including the kitchen and the bathroom which are shared with the landlord and others.

The tenant argued that this tenancy should be covered by the Act and that the landlord should be forced to return the security deposit.

I find that section 4 of the Residential Tenancy Act states that the Act does not apply to the following:

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,

(b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation, (my emphasis)

(d) living accommodation included with premises that

- (i) are primarily occupied for business purposes, and
- (ii) are rented under a single agreement,

(e) living accommodation occupied as vacation or travel accommodation,

(f) living accommodation provided for emergency shelter or transitional housing,

(g) living accommodation

- (i) in a community care facility under the *Community Care and Assisted Living Act*,
- (ii) in a continuing care facility under the *Continuing Care Act*,
- (iii) in a public or private hospital under the *Hospital Act*,
- (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
- (v) in a housing based health facility that provides hospitality support services and personal health care, or
- (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,

(h) living accommodation in a correctional institution,

(i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,

(j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or

(k) prescribed tenancy agreements, rental units or residential property.

The landlord testified that she is not the owner of the rental unit. Given the above, I find that this tenancy relationship is governed by the Act and therefore I have the authority under the Act to hear and to consider this application.

Background and Evidence

The tenant submitted into evidence, proof of registered mail, copies of communications, and a copy of a receipt for payment of the security deposit. The landlord submitted written testimony. Also submitted into evidence was a written statement from the landlord.

The tenant testified that the tenancy began in June 2012 and he moved into the room in July 2012. The tenant testified that the tenancy ended on August 31, 2012.

The tenant testified that he gave the landlord his forwarding address and requested the return of his \$175.00 security deposit in writing prior to August 31, 2012, but the landlord declined to refund his deposit.

The landlord testified that she did not return the tenant's security deposit as there were expenditures caused by the tenant, to which she had allocated his deposit funds.

Analysis

In regard to the return of the security deposit, I find that section 38 of the Act is clear on this issue.

The Act states that the landlord can only retain a deposit if the tenant agrees to this in writing. If the permission is not in written form and signed by the tenant, then the landlord's right to keep the deposit does not exist.

Under the Act landlord can keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord obtains an order through dispute resolution entitling them to retain the claimed amount. However, in order to make a claim against the deposit, the application for dispute resolution must be filed within 15 days after the forwarding address was received. Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application seeking an order to keep the deposit within the time permitted to do so.

Section 38(6) provides that if a landlord does not comply with the Act by either refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

With respect to the landlord's own claim for compensation for damages or money owed to her by the tenant, I find that I am not able to hear nor consider damage claims by landlord during these proceedings as this hearing was convened to deal with the *tenant's* application under section 38 of the Act.

That being said, I must point out that the landlord is at liberty to make a separate application if the landlord wants to initiate a claim for compensation for damages and loss pursuant to section 67 of the Act.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the portion of the \$175.00 security deposit that was wrongfully retained by the landlord, in the amount of \$350.00.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation and I hereby issue a monetary order for \$350.00 in favour of the tenant. This order must be served on the respondent landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in the application and is granted a monetary order for the return of double the security deposit.

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 09, 2013.

Residential Tenancy Branch

