



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

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

Despite being served by registered mail sent on October 31, 2012, as confirmed by the Canada Post registered mail tracking number, the respondent landlord did not appear.

Issue(s) to be Decided

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

Background and Evidence

The tenancy began approximately 5 years ago. The current rent was \$1,770.00 per month and a security deposit of \$700.00 had been paid at the start of the tenancy. Copies of communications and a copy of the deposit cheque were in evidence. The tenancy ended on September 30, 2012.

The tenant testified that she provided the landlord with a written forwarding address on October 8, 2012 and received a communication back from the landlord confirming that the address was received on the same day. A copy of this communication was in evidence.

The tenant testified that the landlord failed to return the deposit within 15 days after the tenancy ended and the written forwarding address had been provided, and on October 31, 2012, they made an application for dispute resolution.

The tenant testified that, on November 1, 2012 they received a cheque for \$707.89 from the landlord. The tenant stated that, under the Act, the landlord was required to pay them a refund of double the security deposit, because the landlord failed to issue the refund within the 15-day deadline specified by the Act.

The tenant is now seeking payment of an additional \$700.00, plus the \$50.00 cost of the application.

Analysis

Section 38 of the Act provides that a security deposit or pet damage deposit must be refunded to the tenant within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

In the alternative, according to the Act, if the landlord seeks to retain the deposit to satisfy a debt or damages, the landlord is required to make a claim against a security deposit by filing an application for Dispute Resolution within 15 days after the end of the tenancy and the date that the written forwarding address was received, whichever is later.

I accept the tenant's undisputed testimony and the documentary evidence verifying that that the written forwarding address was received by the landlord on October 8, 2012, as confirmed by the landlord's communication.

I also accept the tenant's undisputed testimony that the landlord refunded \$700.00 on November 1, 2012 and find that the security deposit was not returned within the 15-day deadline under the Act.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did *not* give the landlord written permission to keep the deposit, nor did the landlord subsequently make any application seeking an order to keep the deposit.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit 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.

In the matter before me, I find that, under section 38, this tenant is entitled to be paid double the security deposit of \$700.00 and the required refund would therefore total \$1,400.00. As the landlord has already refunded \$707.89, beyond the statutory deadline, I find that the tenant is still entitled to an additional \$700.00 refund, plus the \$50.00 cost of filing the dispute resolution application.

I hereby issue a monetary order for \$750.00 in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in her application and is awarded a monetary order for the remaining unpaid funds representing 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 29, 2013

Residential Tenancy Branch

