



Dispute Resolution Services

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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 November 8, 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 on October 1, 2010. The rent was \$1,800.00 per month and a security deposit of \$1,000.00 was paid. Copies of receipts, a copy of the move-in and move-out condition inspection reports, a copy of the tenancy agreement and photographs were in evidence. The tenancy ended on September 30, 2012.

The tenant testified that they provided the landlord with a written forwarding address on November 16, 2012. 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.

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.

According to the Act, if the landlord does seek to retain the security deposit to satisfy a debt or damages, the landlord is required to file an application for Dispute Resolution within 15 days after the end of the tenancy and the date that the written forwarding address is received, to make a claim against the deposit.

I accept the tenant's testimony and evidence verifying that that the written forwarding address was mailed to the landlord on October 16, 2012. I 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 an application seeking an order to keep the deposit within the 15-day deadline to do so.

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 portion of the security deposit of \$1,000.00 that was wrongfully retained by the landlord, totalling \$2,000.00, plus the \$50.00 cost of filing the dispute resolution application.

I hereby issue a monetary order for \$2,050.00 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 the application and is awarded a monetary order for a refund 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: February 04, 2013

Residential Tenancy Branch