



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant seeking a monetary order for the return of double the security deposit that was withheld by the landlord, and the \$50.00 fee paid by the tenant for this application.

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 the 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.

Issues to be Decided

Is the tenant entitled to the return of the security deposit?

The tenant has the burden of proof to establish that the deposit existed. The landlord has the burden of proof to show why the landlord had a legal right to retain any portion of the security deposit.

Background and Evidence

The tenancy began on June 24, 2008. Rent was \$1,100.00 per month and a security deposit of \$550.00 was paid. The tenant furnished a written forwarding address to the landlord on their Notice to vacate, dated Sept 1, 2012 and the tenant moved out at the end of September 2012.

The tenant testified that the landlord only returned part of the security deposit in the amount of \$128.77. The tenant is claiming a refund of double the remainder of the security deposit as the landlord failed to return these funds, held in trust on behalf of the tenant, within the required 15 days under the Act.

The landlord testified that this amount was refunded after deducting cleaning costs pursuant to a term in the tenancy agreement that was signed by both parties at the start of the tenancy.

The landlord acknowledged that the tenant had not given the landlord written permission at the end of the tenancy to retain any portion of the tenant's security deposit. The landlord acknowledged that they had not obtained a monetary order through dispute resolution allowing them to keep the deposit to compensate for damages or loss.

Analysis

Section 38(1) of the Act states that, 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 either repay any security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(4) states that a landlord may retain some or all of the deposits 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. (my emphasis)

I find that the landlord:

- did not return all of the tenant's security deposit within 15 days,
- did not make an application and obtain an order to retain the deposit,
- did not obtain the tenant's written permission at the end of the tenancy to retain any portion of the security deposit.

The landlord had testified that the tenancy agreement signed by the parties contained a provision which allowed the landlord to automatically retain a portion of the security deposit for damages and cleaning. The landlord testified that it was following the agreement in keeping this amount from the deposit and returning the remainder.

With respect to the landlord's argument that a term in the tenancy agreement permitted the landlord to deduct costs from the tenant's security deposit, I find that this is not permitted under the Act. Section 20(e) of the Act, states that a landlord is not allowed to require, or to include as a term of a tenancy agreement, that the landlord

automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

Moreover, section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act or the regulations and any attempt to do so is of no effect.

I find that under the Act, the landlord was not entitled to retain the deposit.

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

I find that the portion of the tenant's security deposit wrongfully retained by the landlord was \$421.23. I find that, under the Act, the tenant is entitled to double this amount, which is a refund of \$842.46 and \$3.91 interest on the original amount held since June 2008, for a total refund of \$846.37.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total monetary compensation of \$896.37 comprised of \$842.46.00 for double the portion of the security deposit wrongfully retained, \$3.91 interest and the \$50.00 fee paid by the tenant to file this application.

I hereby grant a monetary order in the amount of \$896.37 in favour of the tenant. This order must be served on the respondent and if unpaid may be enforced in Small Claims Court if necessary.

Conclusion

The tenant is successful in the application and is granted a monetary order for a refund of double the tenant's security deposit and the cost of the application.

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 12, 2013

Residential Tenancy Branch