



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 seeking an order for the return of the security deposit retained by the landlord.

Despite being served by registered mail sent on February 18, 2013, and confirmed by a Canada Post 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 in January 2012. The rent was \$525.00 per month, plus 45.00 for utilities and a security deposit of \$262.50 was paid. No copy of the tenancy agreement was in evidence. The tenancy ended on December 1, 2012. The tenant testified that the parties had agreed, at the end of the tenancy, that the tenant would pay a pro-rated amount of \$36.33 for two extra days lodging and the tenant authorized that landlord to keep this amount from her \$262.50 security deposit.

The tenant testified that she provided the landlord with her written forwarding address and a request for the refund of her remaining deposit, on January 18, 2013, sent to the landlord by registered mail. A copy of this communication was in evidence. The tenant testified that the landlord failed to return the remaining \$226.17 deposit within 15 days after the tenancy ended and the written forwarding address was given.

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

I accept the tenant's testimony and evidence verifying that the written forwarding address was sent to the landlord on January 18, 2013. 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 all of 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 and pet damage deposit.

In the matter before me, I find that under section 38, this tenant is entitled to be paid double the \$262.50 security deposit amounting to \$525.00, minus the agreed-upon deduction of \$36.33, for total compensation of \$488.67.

I hereby issue a monetary order for \$488.67 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 a refund of double the security deposit, less the retained amount the parties had agreed upon.

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: March 11, 2013

