



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WENDEB PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

The parties agreed that the tenant paid a security deposit of \$400.00 at the start of the tenancy which began on April 1, 2012.

The tenant testified he also paid a pet damage deposit of \$200.00 for each pet totaling the amount of \$400.00.

The landlord's agent testified that the tenant paid \$200.00 as a pet damage deposit and that is the amount shown in the tenancy agreement. The landlord stated the tenant was also issued a receipt in the amount of \$200.00.

The tenant did not deny the receipt was issued for \$200.00, however, alleged the receipt is wrong.

The tenant vacated the premises on August 31, 2012. The tenant provided the landlord with a written notice of the forwarding address to return the security deposit to, at the beginning of February 1, 2013.

The landlord's agent did not dispute that they received the tenant's forwarding address prior to receiving the tenant's application for dispute resolution. The landlord's agent stated the deposits were not returned as they allege the tenant did not provide sufficient notice to end the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit or pet damage deposit.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the deposits.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit and pet damage deposit are held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit or pet damage deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the deposits.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit and pet damage deposit. The legislation does not provide any flexibility on this issue.

The tenant is alleging that he paid \$400.00 for a pet damage deposit. The tenancy agreement and the testimony of the landlord support the tenant paid \$200.00. As result, I find in the absent of any other evidence such a receipt for a pet deposit in the amount of \$400.00, that the tenant has failed to prove that \$400.00 was paid. Therefore, on the balance of probability, I find the tenant paid a pet damage deposit of \$200.00.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of \$1,200.00, comprised of double the pet damage deposit (\$200.00) and security deposit (\$400.00) on the original amounts held.

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

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: May 16, 2013

Residential Tenancy Branch

