



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application filed by the Tenant for a monetary order for the return of the security deposit.

The Tenant attended the hearing by conference call and the Landlord did not. The Tenant states that the Landlord was served with the notice of hearing package by Canada Post Registered Mail on February 28, 2013 and has submitted as documentary evidence a copy of the Canada Post Registered Mail Receipt with the Tracking No. and the returned envelope package from Canada Post which states that the Landlord refused the package. As such, I find that the Landlord has been properly served with the notice of hearing package.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

The Tenant states in her direct testimony that she vacated the rental unit on October 31, 2012 and that she provided her forwarding address in writing to the Landlord on November 1, 2012. The Tenant states that she paid a \$450.00 security deposit to the Landlord when she moved in. The Tenant also states that she made a further attempt in requesting the return of her security deposit in a letter attached to the notice of hearing package sent to the Landlord on February 28, 2013 which was refused.

The Tenant seeks a monetary order for \$900.00 for the return of the \$450.00 security deposit and a doubling of the deposit for not complying with the Act.

Analysis

Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), **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 do one of the following:

(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) **make an application for dispute resolution claiming against the security deposit** or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit 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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

I find based upon the undisputed testimony of the Tenant that the Landlord has failed to return the \$450.00 security deposit and has not filed for dispute resolution within the allowed time frame after November 1, 2012 when the Tenant provided her forwarding address in writing to the Landlord or on October 31, 2012 when the Tenancy ended. The Landlord is in breach of Section 38 (6) of the Residential Tenancy Act. The Tenant has established a monetary claim for \$900.00. The Tenant is granted a monetary order for \$900.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$900.00.

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 22, 2013

Residential Tenancy Branch

