



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 double the security deposit.

The Tenant attended the hearing by conference call and gave undisputed testimony. The Landlord did not attend. The Tenant states that the notice of hearing package and evidence was delivered to the Landlord in person on March 19, 2013 at his place of business which is also his residence. I accept the undisputed testimony of the Tenant and find that the Landlord has been properly served with the notice of hearing package and the submitted documentary evidence.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

The Tenant states that there is no signed tenancy agreement, but that she has lived at the rental unit since July of 2012. The Tenant states that the Tenancy ended on March 1, 2013 when she returned the keys to the rental unit to the Landlord. The Tenant has provided a written note signed by the Landlord confirming the return of the key and the state of the rental unit. The Tenant has also provided a copy of a receipt for \$450.00 that was issued by the Landlord for the security deposit. The Tenant states that the Landlord was provided her forwarding address in writing on March 1, 2013 and again on March 14, 2013 in a letter requesting the return of the \$450.00 security deposit which again provided her forwarding address in writing. The Tenant states that she did not give permission for the Landlord to retain the security deposit nor did the Landlord apply for dispute resolution to retain the security deposit.

Analysis

I accept the undisputed testimony of the Tenant and find that the Landlord has failed to comply with the Residential Tenancy Act. Section 38 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.

The Landlord did not return the security deposit within 15 days of the end of the tenancy nor did he apply for dispute resolution to retain the security deposit after the tenancy ended. Pursuant to Section 38 (6) the Landlord must pay the Tenant double the \$450.00 security deposit. The Tenant has established a monetary claim of \$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: June 11, 2013

Residential Tenancy Branch

