



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 for an order for the return of the security deposit and the pet damage deposit retained by the landlord.

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.

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 on August 1, 2011, at which time a security deposit of \$1,800.00 was paid. Current rent was \$1,800.00 per month. The tenancy ended on February 23, 2013 pursuant to a Two Month Notice to End Tenancy for Landlord's Use. The tenant testified that he had given the landlord a written forwarding address to return the security deposit at the end of the tenancy.

The tenant submitted documentary evidence about the tenancy including a copy of the tenancy agreement, copies of communications, a copy of the Two Month Notice to End Tenancy for Landlord's Use and evidence of structural deficiencies in the unit.

The tenant testified that the landlord did not return his security deposit and did not have his written permission to keep it. The tenant testified that the landlord had not obtained

an order through dispute resolution to deep the tenant's deposit. The tenant is requesting the return of double the security deposit.

The landlord acknowledged that the security deposit was paid by the tenant, and admitted that it was not returned to the tenant after the end of the tenancy. The landlord stated that this was because the unit was returned to the landlord in a damaged condition.

The landlord stated that he believed that he had the authority to keep the deposit to pay for the cleaning and repairs. The landlord submitted a significant amount of evidence to support his allegation that he incurred costs.

Analysis :

With respect to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit only if the tenant gives written permission at the end of the tenancy. A landlord may also retain the security deposit if the landlord has successfully obtained a monetary order through a dispute resolution hearing permitting the landlord to keep the deposit to satisfy a liability or obligation of the tenant.

The Act states that, in order to make a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did not give written permission to the landlord allowing the landlord to keep the deposit. I also find that the landlord did not make a successful application to obtain 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 owed 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.

With respect to the landlord's own claim for damages and loss caused by the tenant, I find that I am unable to consider the landlord's claim against the tenant during these proceedings because this hearing was convened to deal solely with the *tenant's* application under section 38 of the Act and that was the only matter before me.

The landlord is at liberty to make an application for dispute resolution if the landlord intends to pursue a monetary claim for damages against the tenant. Information is available at Residential Tenancy Branch for both landlords and tenants.

In the matter before me, however, I find that under section 38, the tenant is entitled to total compensation of \$3,650.00 comprised of \$3,600.00, which is double the \$1,800.00 security deposit, and the \$50.00 cost of the application.

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order in favour of the tenant for \$3,650.00. This order must be served on the respondent landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in the application and was granted a monetary order for a refund equivalent to double the security deposit.

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 05, 2013

Residential Tenancy Branch