



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 gave undisputed testimony. The Tenant did not submit any documentary evidence. The Landlord did not attend, but did submit documentary evidence which the Tenant has acknowledged receiving. The Tenant states that the notice of hearing package was served on April 5, 2013 by Canada Post Registered Mail. The Tenant has also provided in his direct testimony the Canada Post Customer Receipt Tracking number as confirmation. I am satisfied that both parties have 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 the Tenancy ended on February 28, 2013 and provided his forwarding address in writing by Canada Post Registered Mail on April 15, 2013 to the Landlord for the return of the \$550.00 security deposit. The Tenant has also provided in his direct testimony the Canada Post Registered Mail Customer Receipt Tracking number as confirmation that the address was provided.

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 a claim for the return of the security deposit has been established. Although the Landlord has provided documentary evidence as an explanation as to why the security deposit was not returned, the Landlord has failed to provide any relevant evidence. The Landlord may apply for dispute resolution for money owed or compensation from the Tenant. The Landlord has not provided any evidence that the security deposit was retained with the permission of the Tenant, nor did the Landlord apply for dispute resolution to keep the deposit as per Section 38 (1) of the Act. As such, the Landlord is subject to section 38 (6). The Tenant has established a monetary claim for the return of double the security deposit. The Tenant is granted a monetary order for \$1,100.00. 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 \$1,100.00.

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 27, 2013

Residential Tenancy Branch