



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for the return of the security deposit retained by the landlord.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on May 8, 2013, the respondent did not appear and the hearing was conducted in the respondent's absence.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit under section 38 of the Act?

Background and Evidence

Submitted into evidence was a copy of the tenancy agreement, a copy of the previous dispute resolution decision made dismissing the landlord's application, copies of communications in which the landlord refused to refund the tenant's security deposit and a written chronology by date.

The tenancy began on March 22, 2012 with rent of \$1,600.00. A security deposit of \$800.00 was paid.

There was a previous application made by the landlord seeking to retain the security deposit in partial of alleged rental arrears owed and claimed damages that was heard on March 25, 2013. This application was dismissed.

The tenant testified that after the landlord's application was dismissed, the tenant expected a full refund. The tenant testified that, despite the previous decision that the landlord was not owed any monetary compensation from the tenant, the landlord still refused to return the tenant's security deposit. The tenant is seeking a monetary order for the return of the security deposit under the Act.

Analysis

In regard to the return of the security deposit and pet damage deposit, I find that section 38 of the Act provides that, within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant or make an application for dispute resolution claiming against the deposit..

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 after receipt of the tenant's written forwarding address, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

I find that the landlord did originally make an application to retain the security deposit within 15 days of the end of the tenancy, although the application was not successful.

As the landlord had originally applied within the required 15 days, the tenant is not entitled to the return of double the security deposit in this case. However, I find that the tenant is still entitled to a refund of their original security deposit in the amount of \$800.00 plus the \$50.00 cost of this application.

Based on the evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$850.00. This order must be served on the landlord and may be filed in Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in the application and is granted a monetary order for the security deposit wrongfully withheld by the landlord.

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: August 01, 2013

Residential Tenancy Branch