



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

August 7, 2013, the landlords and tenants entered into an agreement for a tenancy that was scheduled to begin on September 1, 2013 and the tenants paid \$800.00 for the security deposit and \$200.00 towards the pet damage deposit. The landlord testified that , on August 27, 2013 when they went to get the agreement signed, they found a note from the tenant terminating the tenancy before the move-in date. The tenant provided and written forwarding address and requested a refund of the \$800.00 security deposit and \$200.00 pet damage deposit.

The landlord testified that the security deposit was not refunded because, according to the Act, the tenancy was already in effect and the tenant's terminated the tenancy not in accordance with the Act. The landlord acknowledged that the tenants did not give them

permission to keep the deposits, nor did the landlord make an application for dispute resolution seeking to retain the deposits for damages and loss.

The tenants testified that the landlord retained their security deposit without an order to do so and the tenants feel they are entitled to a refund in accordance with the Act. along with a Current rent was \$00000.00 per month. The tenancy ended on DDAATTEE. The tenant testified that he had given the landlord a written forwarding address at the end of the tenancy.

The tenant testified that the unit was returned in good clean condition. The tenant testified that the landlord kept his security deposit without his permission and without obtaining an order under the Act to do so. The tenant is requesting the return of double the security deposit.

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 dispute resolution 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, when the tenant terminated the tenancy, the tenant did not give written permission to the landlords permitting them to keep the deposit. I accept that the landlord did not make an 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's termination of the tenancy, I find that I am not able to consider the landlord's claims against the tenant during these proceedings because this hearing was convened to deal with the *tenant's* application under section 38 of the Act and this was the only matter before me.

The landlord is at liberty to make their own application if they intend to pursue a monetary claim 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 \$2,050.00 comprised of \$1,600.00, which is double the \$800.00 security deposit, \$400.00, which is double the \$200.00 pet damage deposit paid 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 \$2,050.00. 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 and pet damage deposits.

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: November 12, 2013

Residential Tenancy Branch

