



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant seeking an order for the return of the security and pet damage deposits retained by the landlord.

Despite being served by registered mail sent on August 16, 2013, and confirmed by a Canada Post tracking number, the respondent landlord did not appear. The tenant testified that the tracking information verified that the landlord failed to pick up the registered mail and the package was returned unopened.

Issue(s) to be Decided

Is the tenant entitled to the return of the security and pet damage deposits pursuant to section 38 of the Act?

Background and Evidence

The tenancy began in January 2013. The rent was \$675.00 per month, plus 1/3 of utilities and a security deposit of \$337.50 was paid. The tenant was also credited with a portion of the \$337.50 pet damage deposit due to a late move-in date and the tenant paid the remainder of the pet damage deposit. Deposits totaling \$675.00 were being held in trust by the landlord, at the end of the tenancy.

A copy of the tenancy agreement was in evidence. The tenancy ended on July 31, 2013. The tenant testified that the parties could not come to an agreement with respect to the final amount of utilities owed by the tenant.

The tenant testified that she provided the landlord with her written forwarding address, on July 31, 2013, on the move-out condition inspection report. The tenant testified that the landlord failed to return the security deposit within 15 days, after the tenancy ended

and the written forwarding address was given. According to the tenant, the landlord did eventually refund \$405.00, but this occurred after the 15-day deadline under the Act. The tenant testified that she did not give written permission allowing the landlord to retain any amount from the tenant's security or pet damage deposits.

The tenant seeks a refund of double the security and pet damage deposit minus the \$405.00 already repaid.

Analysis

Section 38 of the Act provides that a security deposit or pet damage deposit must be refunded to the tenant within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

In the alternative, if the landlord wants to retain part or all of the deposit to satisfy a debt or damages, the landlord is required to make a claim against a deposit by filing an application for Dispute Resolution, within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

I accept the tenant's testimony and evidence verifying that the written forwarding address was provided to the landlord on July 31, 2013. I find that the security deposit was not returned within the 15-day deadline under the Act and a portion of the security deposit and pet damage deposit in the amount of \$405.00 was refunded after the deadline.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did not give the landlord written permission to keep any of the deposit, nor did the landlord subsequently make an application seeking 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 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 and pet damage deposit.

In the matter before me, I find that under section 38, this tenant is entitled to be paid double the \$675.00 security and pet deposits amounting to \$1,350.00, minus the refunded amount of \$405.00 leaving \$945.00 still outstanding, plus the \$50.00 cost of the application, to which the tenant is entitled.

I hereby issue a monetary order for \$995.00 in favour of the tenant. This order must be served on the Respondent 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 is awarded a monetary order for a refund of double the security deposit, less the retained amount already refunded.

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 18, 2013

Residential Tenancy Branch

