



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAVID BURR LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNSD, 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 retained by the landlord.

Both parties were present at the hearing. At the start of the hearing, only the applicant tenants were present, but an agent of the respondent landlord appeared after the hearing started. 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 affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the tenant entitled to a refund of the security deposit pursuant to section 38 of the Act?

Background and Evidence

The tenancy began in 2008. The current monthly rent for the unit was \$1,460.00 and a security deposit of \$700.00 is being held by the landlord. The tenancy ended on July 31, 2013. According to the landlord, the tenant's written forwarding address was received in August 2013.

The land lord's agent was not able to confirm that the tenant's security deposit was ever returned as he apparently had no knowledge of the tenancy and was attending the hearing on behalf of another rental agent.

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, or if
- the landlord has obtained an order through dispute resolution authorizing the landlord to keep the deposit to satisfy a liability or obligation of the tenant.

Section 38 of the Act requires that the security deposit and pet damage deposit be refunded to the tenant within 15 days of the end of the tenancy and the date that the written forwarding address has been received, whichever is later.

However, if the landlord decides to make a claim against the tenant to keep the deposit for a debt or damages, then 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.

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 the deposit, nor did the landlord subsequently 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.

In the matter before me, I find that under section 38, the tenant is entitled to be paid double the \$700.00 security deposit in the amount of \$1,400.00, \$1.75 in interest plus the \$50.00 cost of this application.

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order for \$1,451.75 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 granted a monetary order for an amount equivalent to double the security deposit under section 38(6) of the Act.

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: December 03, 2013

Residential Tenancy Branch

