



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

The tenancy began on May 15, 2011, at which time a security deposit of \$950.00 and pet damage deposit of \$950.00 were paid. Current rent was \$1,850.00 per month. The tenancy ended on June 30, 2013. The landlord and tenant testified that the tenant had given the landlord a written forwarding address at the end of the tenancy on or around July 6, 2013.

The tenant testified that the landlord kept the security and pet damage deposit without written permission to do so, and without obtaining an order under the Act to do so. The tenant is requesting the return of double the security deposit.

The landlord acknowledged that the deposit was paid but not returned to the tenant after the end of the tenancy. The landlord testified that the rental unit was not left in a good condition when the tenant left and needed substantial repairs.

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 granting the landlord a right 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, at the end of the tenancy, the tenant did not give written permission to the landlord allowing the landlord to keep the deposit. I also find 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, I find that I am unable to consider the landlord's claim 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 is the only matter officially before me at this time.

The landlord is at liberty to make their own application if the landlord intends to pursue a 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 \$3,750.00 comprised of \$1,850.00, which is double the \$950.00 security deposit, \$1,850.00, which is double the \$950.00 pet damage deposit 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 \$3,750.00.00. 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 is granted a monetary order for a refund equivalent to double the security deposit and pet damage deposit.

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 19, 2013

Residential Tenancy Branch

