



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, O

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38. The application is not inclusive of an application for recovery of the filing fee.

The tenant appeared in the conference call hearing, but the landlord did not. The tenant orally provided the tracking number for the registered mail which they claim they sent the landlord on August 23, 2013 to the address provided by the landlord and reflected in the application for Dispute Resolution. The tenant testified the landlord failed to pick up the registered mail. I accept the tenant's testimony that they served the landlord according to Section 88 of the Act with Notice of today's hearing and copy of the application.

The tenant acknowledged that they did not provide the landlord with a copy of any document evidence provided to the Branch after August 23, 2013, and as a result, that evidence is inadmissible and will not be considered. The tenant was permitted to advance their claim.

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed testimonial evidence before me is as follows. The tenancy began February 01, 2013 and ended on July 31, 2013. The landlord collected a security deposit of \$450 at the outset of the tenancy and still retains it in trust, in full. There was a mutual move out inspection conducted at the end of the tenancy, although it was not recorded by the landlord as required by the Act, nor was a copy of an inspection report provided to the tenant.

The tenant claims that on July 31, 2013 they orally provided the landlord with their forwarding address which they witnessed the landlord writing onto paper. The tenant testified that the landlord stated to them they would return the deposit, but subsequently

communicated with the tenant that they caused damage to the unit and stopped communicating with the tenant and did not return the deposit.

Analysis

On preponderance of the undisputed testimonial evidence for this matter and on the balance of probabilities, I have reached a decision.

Section 38 of the Act provides, in part, as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

And

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this matter I accept the tenant's undisputed testimony regarding provision of their forwarding address. However, as the burden of proof rests on the tenant to support their claim for double the original security deposit, I find the tenant has not provided sufficient evidence proving the landlord received their forwarding address in writing. Therefore, the tenant is not entitled to double the original amount of the deposit as per Section 38 of the Act.

Section 36 of the Act, in part states as follows (**emphasis for ease**)

Consequences for tenant and landlord if report requirements not met

36 (2) Unless the tenant has abandoned the rental unit, **the right of the landlord to claim against a security deposit** or a pet damage deposit, or both, for damage to residential property **is extinguished if the landlord**

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord did not complete a condition inspection in concert with the regulations and is therefore precluded from making a claim to retain the deposit. And, as the landlord's right to keep the deposit has been extinguished, it is appropriate that I order the landlord to return the original deposit to the tenant in the original amount of **\$450.00**.

Conclusion

I grant the tenant a Monetary Order under section 67 for the sum of **\$450.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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 02, 2013

Residential Tenancy Branch

