



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Arpeg Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Codes: MNSD, FF

Introduction:

This was an application by the tenant for recovery of his security deposit. The tenant and landlord attended the hearing.

Issues:

Is the tenant entitled to recovery of the security deposit?

Background:

The tenant testified that he “took over” a tenancy from a previous tenant BB on or about July 1, 1996 with rent in the amount of \$ 1,366.00 due in advance on the first day of each month. He testified that Mrs A. the manager for the landlord insisted that he sign a new tenancy agreement and provide a security deposit. The tenant testified that he paid a security deposit of \$ 550.00 at the beginning of the tenancy by way of cheque. The tenant could not find his cheque or the tenancy agreement. The tenancy ended on October 31, 2013. The tenant testified that he provided the landlord with his forwarding address by email on November 1, 2013. The tenant testified that he had not consented to the landlord retaining any of the deposit and had not received any portion of his deposit to date. The tenant requested that his deposit be returned.

The landlord admitted receiving the notice of the forwarding address but claimed that the tenant caused damage to the unit. She also admitted not returning the security deposit. The landlord testified that she could find any record of a tenancy agreement with BB or record that BB had paid any security deposit. She submitted that he must have sublet from BB but she could not find any records of a tenancy agreement with this tenant nor any previous one. She could also not find any record of any security deposit at all regarding this unit. Accordingly the landlord refused to repay any security deposit to the tenant.

Analysis:

I found the tenant's testimony credible. He gave evidence in a calm and cogent way. He did not exaggerate or embellish his testimony. I accept his evidence. The landlord admitted that she lacked personal knowledge of any of the facts but relied solely upon the absence of records. While I accept that it is possible that there would not be any records regarding this tenant I would expect that the landlord would have some record of any previous transactions regarding this unit around or previous to the time of this tenancy. A landlord is required to keep financial records. The lack of any such records points to the neglect of the landlord. In the absence of any records, or personal knowledge of the landlord I accept the tenant's evidence that he paid a security deposit of \$ 550.00 on or about July 1, 1996. I find that the landlord had received the tenant's forwarding address in writing on and had not complied with section 38 of the Act by either returning the deposit, obtaining the tenant's consent to retain any portion of same or making a claim against the deposit by way of application for dispute. Accordingly pursuant to section 38 of the Act the tenant is entitled to recover double the security deposit.

Conclusion:

I find that the tenant has established a claim totalling \$ 1,263.88 representing double the deposit inclusive of interest. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$ 1,313.88. I grant the tenant a monetary Order in that amount. This Order may be enforced in the Small Claims Court should the landlords not comply.

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: February 24, 2014

Residential Tenancy Branch

