



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 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 double the security deposit pursuant to section 38 of the Act?

Background and Evidence

The tenancy began on September 12, 2012 and current rent was \$1,200.00 per month and a security deposit of \$600.00 was paid. The tenancy ended with a Two Month Notice to End Tenancy for Landlord's Use and the tenant vacated early on July 15, 2013 and was duly compensated under section 51 of the Act.

According to the landlord, a move-out condition inspection was completed with the tenant and the tenant's written forwarding address was received at that time.

The land lord acknowledged that the security deposit was not returned. However, the landlord's position is that the tenant had consented to the landlord retaining the security deposit until certain items were returned to the landlord. Although no copy of the move-

out condition inspection report was in evidence, the landlord had submitted a hand-written, undated document containing the following statement:

"Damage Deposit to be returned when desk and mirror are returned in original condition."

The landlord pointed out that the tenants signed under this statement. The landlord's position is that this constitutes the tenant's permission that the landlord may retain the \$600.00 security deposit.

Also in evidence was a letter from the tenant requesting the refund of the security deposit. This letter is dated July 5, 2013, sent from the tenant to the landlord and states in part:

"We would also like to claim the security deposit of (\$600.00) paid on Sept 1, 2012."

The tenant testified that the landlord did not refund the tenant's security deposit within 15 days, was not given written permission by the tenant to retain it and did not obtain an order to keep it. The tenant is therefore seeking a refund of double the security deposit.

The landlord testified that the tenant failed to surrender some of the landlord's possessions that had been stored in the rental unit, and this was the reason that the tenant's security deposit was retained by the landlord.

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.

In regard to the landlord's argument that the tenant had willingly signed over the deposit by giving the landlord written permission to keep it, based on the note in evidence, I find that this note does not suffice as valid written permission for the landlord to keep the security deposit under the Act, because it is undated and fails to specify the precise amount being surrendered. In addition, I find that the signed note is also contradicted by the tenant's written request to the landlord, dated July 5, 2013, that specifically requests the security deposit be returned to the tenants.

I find that neither of the parties had submitted a copy of the move out condition inspection report, which would have featured a specific section with space for the tenant to allocate their security deposit, or portion thereof, for debts or damages to the landlord.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did not give the landlord valid 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.

With respect to the landlord's testimony that the tenant owes the landlord for damages or losses incurred by the landlord, I find that I am not able to hear, nor consider any of the landlord's claims against the tenant during these proceedings because this hearing was convened solely to deal only with the tenant's application under section 38 of the Act and this is the only matter officially before me.

The landlord did not make a cross application. That being said, I find that the landlord is at liberty to make their own separate application, pursuant to section 67 of the Act, if the landlord decides to do so.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the \$600.00 security deposit in the amount of \$1,200.00 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 \$1,250.00 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 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: March 03, 2014

Residential Tenancy Branch

