



Dispute Resolution Services

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 seeking the return of the security deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing introductions were made and the hearing process explained. The participants had an opportunity to submit evidence prior to this hearing and to present affirmed oral testimony during the hearing. I have considered the affirmed testimony and evidence that was properly served.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposits under section 38 of the Act?

Background and Evidence

The tenancy began in April 2011. The rent was \$1,800.00 per month and a security deposit of \$900.00 had been paid. The tenancy ended on November 15, 2013.

The landlord testified that the tenant provided the landlord with their written forwarding address, on November 15, 2013. The tenant testified that the landlord failed to return the security deposit within 15 days, after the tenancy ended and the written forwarding address was given, but did refund \$400.00 on December 12, 2013 which occurred *after* the 15-day deadline under the Act.

The landlord acknowledged that the tenant did not give written permission for the landlord to retain a portion of the tenant's security deposit. The tenant seeks a refund of double the security and pet damage deposits minus the \$400.00 already repaid.

Analysis

Section 38 of the Act provides that a security deposit or pet damage deposit must be refunded to the tenant within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

In the alternative, if the landlord wants to retain the deposit to satisfy a debt, a claim must be made by filing an application for Dispute Resolution, within 15 days after the end of the tenancy and receipt of the forwarding address was received.

I accept the testimony and evidence verifying that that the written forwarding address was provided to the landlord on November 15, 2013. I find that the security deposit was not returned within the 15-day deadline under the Act and a portion of the security deposit in the amount of \$400.00 was refunded after the deadline.

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 any of the deposit, nor did the landlord subsequently make an application seeking 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 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 and pet damage deposit.

In the matter before me, I find that under section 38, this tenant is entitled to be paid double the \$900.00 security amounting to \$1,800.00, minus \$400.00 leaving \$1,400.00 still outstanding, plus the \$50.00 cost of the application, to which the tenant is entitled.

I hereby issue a monetary order for \$1,450.00 to the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) if unpaid.

Conclusion

The tenant is successful in the application and is awarded a monetary order for a refund of double the security deposit, less the retained amount already refunded.

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: April 03, 2014

Residential Tenancy Branch