



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

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 inclusive of an application for recovery of the filing fee for the cost of this application.

Preliminary matters

The tenant testified they filed their application stating the landlord as the name of the resident manager in conjunction with the name of the residential property. The tenant further testified they served the landlord with their claim by registered mail to the address of the resident manager for the residential property, as named in the original style of cause. I accept the tenant sent the Notice of Hearing to the address of the landlord identified by the name of the resident manager and the residential property. I accept the tenant's request for amendment of the style of cause to reflect solely the name of the residential property and the style of cause is herein amended.

As a result of all the above, I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to return of their security deposit in the amount claimed?

Background and Evidence

The undisputed facts before me are as follows. The tenancy began in November 2012 and ended when the tenant vacated on November 30, 2013. The landlord collected a security deposit of \$562.50 at the outset of the tenancy and still retains it in full. There was a move in inspection conducted at the outset. There was *no* move out inspection conducted at the end of the tenancy. The tenant testified the landlord / resident manager did not attend the arranged appointment to conduct the inspection on the last day of the tenancy. Subsequently, the landlord telephoned the tenant stating the tenant had left the unit unacceptable and would not be returning the security deposit. The tenant further testified they provided a text message to the landlord notifying them of their forwarding address, but to date has not received any of their security deposit.

Analysis

On preponderance of the evidence and on the balance of probabilities, I find as follows.

Section 38 of the Act provides, in part, as follows,

Return of security deposit and pet damage deposit

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

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| 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
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| 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 find the tenant's testimony regarding provision of the forwarding address indicates it was *not done in writing* as prescribed by the Act. Therefore, the tenant *is not* entitled to double the original amount of the deposit as per Section 38(6) of the Act.

Section 36 of the Act, in relevant part, states as follows

Consequences for tenant and landlord if report requirements not met (emphasis mine)

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**

The landlord did not participate in the move out inspection and is therefore is prevented from making a claim to retain the deposit, as their right to do so is extinguished by the Act. Therefore, as the landlord's right to keep or claim the deposit has been extinguished, it is appropriate that I order the landlord to return the deposit to the tenant in the full amount of \$562.50. The tenant is further entitled to recovery of the \$50.00 filing fee for this application for a total entitlement of **\$612.50**.

Conclusion

I grant the tenant a Monetary Order under section 67 for the sum of **\$612.50**. 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: April 02, 2014

Residential Tenancy Branch