



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by the tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

The tenants attended the hearing by conference call and gave undisputed testimony. The landlord did not attend or submit any documentary evidence. The tenants state that the landlord was served twice with the notice of hearing package and the submitted documentary evidence. The tenants state that the landlord was served on March 13, 2014 in person and again by Canada Post Registered Mail. The tenant states that he has a Canada Post Registered Mail Tracking number, but was unable to locate it during the hearing. I accept the undisputed evidence of the tenants and find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on November 1, 2011 on a fixed term tenancy for 6 months ending on April 30, 2012. The tenants states that the tenancy was then extended on a month to month basis as shown by the amendment on the submitted copy of the signed tenancy agreement. The monthly rent was \$2,000.00 payable on the 1st of each month and a security deposit of \$1,000.00 was paid.

The tenant states that the tenancy ended on November 30, 2013 and that the tenant's forwarding address in writing was provided in a letter on October 22, 2013 and again on

December 31, 2013. The tenants state that the landlord as of the date of this hearing has not returned any portion of the \$1,000.00 security deposit.

The tenants seek a monetary order for \$2,000.00 under section 38 of the Act.

Analysis

Section 38 of the Residential Tenancy Act states,
SECURITY DEPOSIT RETURN

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

(a) the date the tenancy ends, and

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

the landlord must do one of the following:

(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;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

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

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

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

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

I accept the undisputed evidence of the tenants and find that the landlord has failed to comply with section 38 of the Act by returning the \$1,000.00 security deposit within 15 days after the end of the tenancy or when the landlord received the tenant's forwarding address in writing on November 30, 2013. The tenant also provided a second letter to the landlord providing a forwarding address in writing on December 31, 2013. As of the date of this hearing, I find that the landlord has failed to return the original \$1,000.00 security deposit nor has the landlord filed an application within 15 days of the end of the tenancy to dispute the return of the security deposit. The tenants have established a monetary claim under section 38 of the Act for the return of double the deposit of \$2,000.00. The tenants are also entitled to recovery of the \$50.00 filing fee. I grant a monetary order under section 67 of the Act for the balance due of \$2,050.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order for \$2,050.00.

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: June 27, 2014

Residential Tenancy Branch

