



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 seeking an order for the return of the security deposit retained by the landlord.

Despite being served by registered mail sent on January 7, 2014, the respondent landlord did not appear.

Issue(s) to be Decided

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

Background and Evidence

The tenancy was to begin on November 1, 2013 and the tenants paid a security deposit of \$1,000.00 on October 19, 2013 in anticipation of moving into the unit.

The tenant testified that they then decided not to take the place and let the landlord know on October 20, 2013 by telephone. The tenant testified that the landlord told them they would not be getting their security deposit refunded unless the unit was successfully re-rented. On November 6, 2013 the tenant sent registered mail to the landlord with a written forwarding address requesting the deposit be refunded.

According to the tenant, they also drove by the rental property and noted that it was occupied in November 2013. The tenant testified that the landlord has refused to respond to their requests for the return of the security deposit and the tenant is requesting an order for a refund of double the deposit. The tenant pointed out that the landlord did not comply with the Act by failing to either return the security deposit or filing an application to retain it within 15 days.

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 or damages, according to the Act, the landlord is required to make a claim against a security deposit by filing an application for Dispute Resolution within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

I accept the tenant's testimony verifying that the written forwarding address was received by the landlord in November 2013 by registered mail. I find that the security deposit was not returned within the 15-day deadline under the Act.

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 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, they may not make a claim against the deposit, and must pay the tenant double the amount of the security deposit.

In the matter before me, I find this tenant is entitled, under section 38, to be paid double the security deposit of \$1,000.00 that was wrongfully retained by the landlord, totalling \$2,000.00, plus the \$50.00 cost of filing the dispute resolution application.

I hereby issue a monetary order for \$2,050.00 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 tenants are successful in the application and are granted a monetary order for a refund of double the security deposit.

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 16, 2014

Residential Tenancy Branch

