



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

Background and Evidence

The tenant testified that the tenancy began in April 2012, at which time a security deposit of \$400.00 was paid. The landlord testified that the tenancy ended March 2014. The landlord testified that the tenant did not provide the landlord with a forwarding address and all communications were by email.

The landlord testified that the tenant left the unit in need of cleaning at the end of the tenancy and the deposit was withheld to pay for this. The landlord testified that no forwarding address was provided by the tenant until the hearing package was served.

The tenant's position is that, the landlord did not refund the security deposit within the required 15 days and the landlord should therefore be required to pay double the security deposit under section 38(6)(b).

Analysis

In regard to the return of the security deposit, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing. If the permission is not in written form and signed by the tenant, then the landlord's right to keep the deposit without an order to do so does not exist.

I find that a landlord can keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord obtains an order through a dispute resolution hearing ordering that they can retain the amount. However, in order to avoid having to pay double the security deposit, the landlord's application for dispute resolution must be filed within 15 days after the forwarding address is received.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed, or by 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.

Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord obtain an order to keep the deposit.

That being said, I find that the landlord was effectively prohibited from making an application to retain the deposit, due to the tenant's failure to provide a forwarding or service address, before making this application for a monetary order for the return of double the security deposit.

I find that the landlord would obviously be thwarted from serving any claim to retain the deposit until they received the tenant's hearing package. I find that the tenant's action in not releasing the address but instructing the landlord to return the funds by "email transfer" is not consistent with the tenant's responsibilities under the Act.

Although it could be argued that the landlord did receive the forwarding address on the application more than 15 days prior to the hearing, by virtue of the fact that the tenant's forwarding address was finally furnished by the tenant on the application, I must point out that, at the time the tenant's application was made, the landlord had not yet committed any violation of the Act by wrongfully withholding the deposit. In other words, in the tenant's application, the tenant was alleging non-compliance by the landlord that had not yet actually occurred.

Moreover, as of the filing date, I find that the tenant had not fully complied with their obligation under the Act to furnish a written forwarding address. Therefore I find that it would be contrary to the principle of natural justice and administrative fairness to reward the tenant for applying prematurely, while being guilty of failing to comply with the Act prior to filing the monetary claim against the landlord.

In the matter before me, I find that under section 38, the tenant is entitled to the return of the security deposit which is held in trust on behalf of the tenant by the landlord until the end of the tenancy, in the absence of it either being signed over by the tenant or ordered to be retained.

Accordingly I find that the tenant is, at present, entitled to receive compensation in the amount of \$450.00 comprised of \$400.00 for the deposit and the \$50.00 fee paid by the tenant for this application.

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order in favour of the tenant for \$450.00. 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 partly successful in the application and is granted a refund of the security deposit paid. The tenant's request for a refund of double the security deposit is denied because the tenant did not give the landlord a written forwarding address until the hearing documents had already been served on the landlord.

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: July 23, 2014

Residential Tenancy Branch

