



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 a refund of the security deposit pursuant to section 38 of the Act?

Background and Evidence

The tenancy began on June 1, 2014 with rent of \$1,050.00 and a security deposit of \$525.00 was paid. The tenancy ended on January 15, 2014.

According to the landlord, the tenants never provided any written forwarding address.

However, the tenant testified that they sent the landlord a letter with their forwarding address and a request for the security deposit refund. Submitted into evidence was a copy of this letter dated February 14, 2014.

The tenant testified that the landlord has not refunded the deposit and the tenant is seeking a monetary order for \$525.00.

The land lord acknowledged that the security deposit was not returned and that the tenant had never given the landlord written permission to keep any portion of the security deposit. The landlord testified that the tenant did not leave the unit in good condition and the landlord was trying to sort out this matter with the other co-tenant. The landlord testified that they did not know about their responsibilities regarding the handling of the security deposit under the Act.

Analysis

With respect to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit only if:

- the tenant gives written permission at the end of the tenancy, or if
- the landlord has obtained an order through dispute resolution authorizing the landlord to keep the deposit to satisfy a liability or obligation of the tenant.

Section 38 of the Act requires that the security deposit and pet damage deposit be refunded to the tenant within 15 days of the end of the tenancy and the date that the written forwarding address has been received, whichever is later.

However, if the landlord decides to make a claim against the tenant to keep the deposit for a debt or damages, then the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received.

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.

Although section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed 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, the applicant tenant only seeks a refund of \$525.00 and waived the remainder normally payable under the Act.

With respect to the landlord's testimony that the tenant owes the landlord monetary for damages, I find that I am not able to hear, nor consider any of the landlord's claims against the tenant during these proceedings because this hearing was convened to deal only with the *tenant's application* under section 38 of the Act.

In the matter before me, I find that under section 38, the tenant is entitled to be paid \$525.00, plus the \$50.00 cost of this application.

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order for \$\$575.00.00 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 tenant is successful in the application and is granted a monetary order for an amount equivalent to double the security deposit under section 38(6) of the Act.

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: September 25, 2014

Residential Tenancy Branch

