



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenants for an order compelling the landlord to return double their security deposit as well as recovery of the \$50.00 filing fee paid to bring their application. The landlord did not participate in the conference call hearing despite having been served with the application for dispute resolution and notice of hearing, which were sent via registered letter on May 21, 2014.

The day before the hearing, the Residential Tenancy Branch (the “Branch”) received a faxed letter from the landlord advising that he could not attend the hearing and requesting an adjournment. This letter was not forwarded to me until after the hearing. The fax also contained an application for dispute resolution which the landlord apparently filled out but did not file with the Branch. As the application was not filed, it is not effective to commence a claim and therefore the landlord’s request could not have been considered in this hearing.

The Rule 6.2 in the Residential Tenancy Branch Rules of Procedure require that a party requesting an adjournment either submit a written request 3 business days in advance of the hearing or send an agent to the hearing to orally make the request. In this case, the landlord did neither and the hearing proceeded in his absence. As is outlined in the Analysis below, it would appear that even if the landlord had attended the hearing, the outcome would not have differed.

Issue to be Decided

Are the tenants entitled to the return of double their security deposit and recovery of their filing fee?

Background and Evidence

The tenants' undisputed evidence is as follows. The tenancy began on September 15, 2013 and ended on February 28, 2014. At the outset of the tenancy, the tenants paid a \$725.00 security deposit. On February 28, 2014, the tenants personally served the landlord with their forwarding address in writing.

Analysis

Section 38(1) of the Act provides that within 15 days of the end of the tenancy and having received the tenants' forwarding address in writing, the landlord must either repay the security deposit in full or file an application for dispute resolution claiming against the security deposit. The tenants testified that the landlord did not return the security deposit and in the landlord's faxed letter received by the Branch on September 18, the landlord acknowledged having retained the security deposit. There is no record of the landlord having filed an application for dispute resolution claiming against the deposit.

Section 38(6) of the Act provides that if the landlord fails to return the deposit or file a claim against it within 15 days, the landlord may not claim against the deposit and must pay the tenants double the amount of the deposit.

While the landlord apparently believes he is entitled to arbitrarily retain the deposit against monies he believes he is owed by the tenants, the Act is clear that the landlord may not do so. Section 38(3) and (4) provide that the landlord may only retain the deposit in 3 circumstances: if he has a monetary order from the Branch which remains unpaid at the end of the tenancy, if the tenants agree in writing that he may retain the deposit or if the Branch orders that the landlord may retain the deposit.

I find that there is no evidence that the landlord has the right to retain the security deposit and I find that the tenants are entitled to an award of double the deposit. Had the landlord attended the hearing, the only effective defence he could offer against the tenant's claim would be to prove that he repaid the deposit, that he filed a claim against it, that he had their written agreement that he could retain the deposit or that he had a monetary order from the Branch which he offset against the deposit. The landlord is free to file a claim for any monies he believes he is owed, but will be liable for double the security deposit regardless of whether his claim is successful.

I award the tenants \$1,450.00 which represents double their \$725.00 security deposit. As the tenants have been successful in their claim, I find they should recover their filing fee and I award them \$50.00 for a total award of \$1,500.00.

Conclusion

The tenants are awarded \$1,500.00 and I grant them a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 19, 2014

Residential Tenancy Branch

