



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MNDC

Introduction

There are applications filed by both parties. The landlord seeks a monetary order to retain the security deposit and recovery of the filing fee. The tenant seeks a monetary order for damage or loss or money owed or compensation, the return of double the security deposit and recovery of the filing fee.

The tenant attended the hearing by conference call and gave undisputed testimony. The landlord did not attend. The tenant did not submit any documentary evidence, save for a copy of the Canada Post Registered Mail Customer Receipt Tracking number. The tenant stated that he did receive the landlord's notice of dispute hearing package and some documentary evidence.

At the end of the hearing after waiting 15 minutes past the start of the hearing time, the landlord's application was dismissed without leave to reapply as the tenant was properly served and was ready to respond to the landlord's claim.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenant seeks a monetary claim of \$3,100.00 for the return of double the pet damage (\$775.00) and security deposits (\$775.00). The tenant stated in his direct testimony that after moving out of the rental unit on March 31, 2014 and providing his forwarding address by email on April 20, 2014 to the landlord requesting the return of his combined deposits the landlord as of the date of this hearing has not returned them. The tenant stated that no permission was given for the landlord to retain both deposits.

Analysis

Section 38 of the Residential Tenancy Act speaks to the return of a security deposit. It states,

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 direct testimony of the tenant and find that the landlord has failed to return the pet damage deposit of \$775.00 and the security deposit of \$775.00 within the allowed time frame after the end of the tenancy. Although email is not a normally accepted form of notice in "writing", the tenant has stated that the landlord acknowledged receipt of this email by filing an application for dispute resolution as confirmation that the landlord had received notice. The tenancy ended on March 31, 2014, but the landlord filed for dispute resolution to dispute the return of the combined deposits on May 28, 2014, which is clearly beyond the allowed timeframe. The landlord failed to attend on the hearing date to put forth the application. The tenant is granted a monetary claim of \$3,100.00. The tenant is also entitled to recovery of the \$50.00 filing fee. The tenant is granted a monetary order for \$3,150.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$3,150.00.

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: September 05, 2014

Residential Tenancy Branch

