



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by the tenant for a monetary order for the return of 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 or submit any documentary evidence. The tenant states that the landlord was served with the notice of hearing package on December 16, 2014 by Canada Post Registered Mail and has provided a copy of the Customer Receipt Tracking number as confirmation. I accept the undisputed evidence of the tenant and find that the landlord has been properly served with the notice of hearing package on December 16, 2014 by Canada Post Registered Mail.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Background and Evidence

The tenant states that there is no signed tenancy agreement, but that the tenant has lived in the basement rental for approximately 7-8 years and pays monthly rent of \$750.00 payable on the 1st of each month and paid a \$375.00 security deposit when he moved in.

The tenant states that the tenancy ended on May 31, 2014 and that his forwarding address in writing was given in a letter to the landlord on May 31, 2014 requesting the return of his \$375.00 security deposit. The landlord states that as of the date of this hearing that the landlord has not returned any part of his \$375.00 security deposit. The tenant confirmed in his direct testimony that he did not give permission to the landlord to retain any portion of the security deposit.

The tenant seeks a monetary order for \$375.00.

Analysis

Section 38 of the Residential Tenancy Act 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 find based upon the undisputed direct testimony of the tenant that the landlord was properly served with the tenant's forwarding address in writing on May 31, 2014. As of the date of this hearing the landlord has not returned the \$375.00 security deposit. The tenant did not provide permission to the landlord to retain the security deposit nor has the landlord had permission from the Residential Tenancy Branch to retain any portion of it. The tenant was unable provide an exact date for when the tenancy began or when the \$375.00 security deposit was paid. As such, I will assign a date of January 1, 2008 at the 7 year mark as a guideline. Using this, I find that the tenant is entitled as per the Act to \$6.11 in accrued interest to the tenant for the original \$375.00 security deposit held in trust. I also find that as the landlord has failed to comply with Section 38 (1) of the Act that Section 38 (6) applies in that the landlord must pay the tenant double the amount of the security deposit, \$750.00. The tenant has established a monetary claim of \$756.11. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant a monetary order for \$806.11. 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 \$806.11.

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: January 14, 2015

Residential Tenancy Branch

