



Dispute Resolution Services

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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 claim 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 and the submitted documentary evidence by Canada Post Registered Mail on January 30, 2015 and has submitted a copy of the Customer Receipt Tracking number as confirmation.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Background and Evidence

The tenant states that their tenancy ended on December 15, 2014 and that their forwarding address in writing was provided to the landlord by Canada Post Registered Mail on December 17, 2014. The tenant states that the package was returned by Canada Post after the tenant had confirmed the address provided by the landlord.

The tenant states that multiple attempts at contacting the landlord have failed and that they have not yet received the \$500.00 security deposit that was paid. The tenant has provided a copy of an email "Interact E Transfer", that confirms the payment on March 5, 2012 at the beginning of the tenancy.

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 accept the undisputed evidence of the tenant and find that the landlord has failed to return the \$500.00 security deposit within 15 days of receiving the tenant's forwarding address in writing by Canada Post Registered Mail on December 17, 2014. The landlord is deemed to have received the tenant's forwarding address in writing 5 days after on December 22, 2014. The landlord has not returned the security deposit nor has the landlord filed an application to dispute the return of it.

As such, I find that the tenant has established a claim for a monetary order for \$600.00.

Section 38 (6) applies as the landlord has failed to repay the security deposit or file an application for dispute the tenant is also entitled to the return of double the security deposit. The tenant is also entitled to \$500.00 under this Act.

The tenant has established a monetary claim of \$1,000.00. The tenant is also entitled to recovery of the \$50.00 filing fee. The tenant is granted a monetary order for \$1,050.00. 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 \$1,050.00.

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: February 19, 2015

