



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application filed by the tenant for a monetary order for the return of the security deposit.

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 October 22, 2014 and has submitted a copy of the Canada Post Customer Receipt Tracking number as confirmation. The tenant provided direct testimony stating that although the application was filed on August 5, 2014, the tenant did not receive the package until August 21, 2014. The tenant also stated that they were still gathering documentary evidence and that the landlord was not served with the notice of hearing package and the submitted documentary evidence until October 22, 2014. The tenant clarified that the package was returned by Canada Post as the landlord failed to claim the package after notice was left for the landlord to pick up the package. The tenant stated that the address that the package was sent was provided by the landlord at the beginning of the tenancy and that the landlord still resides there.

I accept the undisputed testimony of the tenant and find that the landlord was served by Canada Post Registered Mail on October 22, 2014. In accordance with sections 89 and 90 of the Act, I find that the landlord was duly served with the tenant's dispute resolution hearing package including notice of this hearing on October 27, 2014.

The tenant has also filed an evidence package that was included with the landlord's notice of hearing package which contains an amended copy of their application on October 22, 2014 increasing the monetary claim to \$3,600.00 and a change in their mailing address as they moved. The tenant's clarified that the monetary increase was for notice that they were seeking compensation in accordance with Section 38 (6) of the Act.

I find that as the Act applies that the tenant's amendment is not needed, but that it provides notice to the landlord that the tenants are not waiving their rights to compensation as per the Act.

As for the tenant's mailing address claim was included in the package to the landlord in the documentary evidence package sent on October 22, 2014, the landlord is considered duly served with the change in address. The Residential Tenancy Branch File shall be amended to update the tenant's current mailing address.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenant states that there is a signed tenancy agreement, but that the landlord has failed to provide a copy to the tenant during the tenancy. The tenant states that the tenancy began on July 21, 2013 and that the monthly rent was \$1,800.00 and a combined pet damage deposit and security deposit of \$1,800.00 was paid to the landlord.

The tenant has provided copies of an email dated July 19, 2013 from the landlord confirming receipt of the combined security and pet damage deposits. The tenant has also provided a copy of an e-Transfer confirming receipt of the deposits by the landlord on July 19, 2013.

The tenant states that the rental unit was vacated on July 7, 2014. The tenant states that they allowed the landlord to retain \$250.00 from the \$1,800.00 deposit for replacement of broken fence posts. The tenant also stated that they had agreed to allow the landlord until August 1, 2014 to return the remaining portion of \$1,550.00. The tenant states that as of the date of applying for this application the landlord has not returned the undisputed amount.

The tenant seeks a monetary order for the entire \$1,800.00 deposit after having provided the landlord with their forwarding address in writing on the move-out date on July 7, 2014. The tenant has provided a copy of the written notice to the landlord.

Analysis

Section 38 of the Residential Tenancy Act speaks to the return of a security deposit and 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 testimony of the tenant that the landlord did not return the combined deposits of \$1,800.00 within the allowed timeframe after the end of the tenancy on July 7, 2014. The tenant has provided evidence that the landlord has failed to return any or part of the deposits as of the date of this hearing. I find that the tenant is entitled to the return of the \$1,800.00 deposits.

The landlord having failed to return the deposits within the allowed timeframe or make an application to dispute the return of the deposits is subject to Section 38 (6) of the Act and must pay the tenant double the combined deposits of \$3,600.00. The tenant is granted a monetary order for \$3,600.00.

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 \$3,600.00.

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 25, 2015

Residential Tenancy Branch

