



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUME INVESTMENTS LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with a tenant's request for return of the portion of the security deposit that was not refunded to her. The landlord did not appear at the hearing. I was provided two registered mail tracking numbers as proof the hearing package and the tenant's written submissions were sent to the landlord on February 5, 2015 and July 27, 2015. A search of the tracking numbers showed that both registered mail packages were successfully delivered. I was satisfied the landlord was served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

Is the tenant entitled to return of the portion of the security deposit not refunded to her?

Background and Evidence

The tenancy commenced December 1, 2012 and ended October 1, 2014. The tenant paid a security deposit of \$387.50. The tenant gave notice to end the tenancy to the landlord on September 4 or 5, 2014 with a stated effective date of October 1, 2014 and the notice included her forwarding address. The landlord did not propose a date or time for the move-out inspection. The tenant did not authorize the landlord to make any deductions from the security deposit in writing. The tenant received only a partial refund of her security deposit in the amount of \$277.50 on October 8, 2014.

On January 7, 2015 the tenant's advocate faxed a letter to the landlord seeking the balance of the security deposit and provided the landlord with another forwarding address, his office.

The landlord responded to the Advocate's letter by way of a letter dated January 21, 2015. The landlord referred to a section of the tenancy agreement that provides for cleaning of carpets and window coverings.

The tenant testified that she did not authorize the landlord to make any deductions from her security deposit in writing. Rather, she submitted that she was told that she did not have to clean the carpets since there had been a flood and mould in the unit.

The tenant filed this Application on February 3, 2015 seeking to recover the \$110.00 that was deducted from the security deposit without authorization. During the hearing, the tenant expressly waived any entitlement to doubling of the security deposit.

Analysis

section 38(1) of the Act provides that unless a landlord has a legal right to retain the security deposit, as established under subsections 38(3) and (4), a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit unless the tenant expressly waives entitlement to receive double the security deposit. The tenant expressly waived entitlement to doubling of the security deposit and I proceed to consider whether she is entitled to return of the \$110.00 that was deducted from the deposit.

In this case, I was not provided any information to suggest the tenant extinguished her right to return of the security deposit; nor, did the tenant authorize the landlord to retain any portion of the security deposit in writing. I am also satisfied by the undisputed evidence that the landlord was provided with the tenant's forwarding address, including the address provided in the fax sent by the Advocate to the landlord's office on January 7, 2015.

In the absence of the tenant's authorization to make a deduction from the security deposit, the landlord was required to file an Application for Dispute Resolution if the landlord wished to make a deduction from the tenant's security deposit. The landlord has not filed such an Application; therefore, I find the landlord does not have the right to keep a portion of the security deposit and the landlord is ordered to pay the tenant the balance of the security deposit in the amount of \$110.00.

I provide the tenant with a Monetary Order in the amount of \$110.00 to serve and enforce. To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

The landlord remains at liberty to file its own Application for Dispute Resolution if it intends to seek damages or loss from the tenant within the statutory time limit for doing so.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$110.00 to serve and enforce upon the landlord.

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: August 13, 2015

Residential Tenancy Branch

