



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EDUARDO HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the Tenant for a Monetary Order for return of double the security deposit, the interest and the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on June 15, 2015 the Landlord did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the Landlord has been duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

1. Is the Tenant entitled to a Monetary Order for return of double the security deposit?
2. Is the Tenant entitled to recovery of the \$50.00 filing fee paid?

Background and Evidence

The Tenant paid a security deposit of \$380.00 on November 1, 2006. The Tenant vacated the premises on October 31, 2014. The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The Landlord made an application for dispute resolution seeking to retain the security deposit which was heard on May 19, 2015. The Landlord did not attend that hearing and the Landlord's application as dismissed without liberty to reapply. On June 15, 2015 the Landlord requested review consideration of the May 19, 2015 decision claiming he could not attend the hearing. The Landlord applied outside the timelines prescribed by section 80 of the *Residential Tenancy Act* and his application for review consideration was dismissed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

The Landlord's application for authorization to retain the security deposit was dismissed and accordingly they had no authority to retain the deposit. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an Order from an Arbitrator. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

The security deposit has accrued \$11.83 in interest since November 1, 2006. Accordingly, I find the Landlord holds \$391.83 in trust for the Tenant. Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$833.66**, comprised of double the security deposit and interest on the original amounts held ($\$380.00 + \$11.83 = \$391.83 \times 2 = \783.66), and the \$50.00 fee for filing this Application.

Conclusion

The Tenant is entitled to return of double her security deposit and interest as well as recovering of the filing fee for a total Monetary Order in the amount of **\$833.66**.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the small claims division of the Provincial Court and enforced as an Order of that court.

Dated: November 18, 2015

Residential Tenancy Branch

