



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages to the unit;
2. For money owed or compensation under the Act;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit;
2. For a monetary order for money owed or compensation under the Act; and
3. To recover the cost of filing the application.

The tenant appeared.

Preliminary matter

These matters were adjourned on August 12, 2015 and again on October 29, 2015, interim decisions were made which should be read in conjunction with this final decision.

In the interim decision dated October 30, 2015, an order was made, that both parties must attend on the date, when the dispute resolution hearing will be reconvened, which was scheduled for today (January 8, 2016) at 9:30am. A Notice of adjourned hearing was sent to the parties on November 6, 2015.

Landlord's application

The landlord failed to appear for the telephone conference call scheduled on January 8, 2016 at 9:30 am. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the tenant. Therefore, as

the landlord did not attend the hearing by 9:40 A.M, and the tenant appeared and was ready to proceed, I dismiss landlord's application without leave to reapply.

Issue to be Decided

Is the tenant entitled to a monetary order for the return of double the security deposit?

Background and Evidence

The tenancy began on May 1, 2013. Rent in the amount of \$850.00 was payable on the first of each month. A security deposit of \$425.00 was paid by the tenant. The tenancy ended on November 1, 2014.

The tenant testified that they vacated the premises on November 1, 2014, although they paid rent for the full month. The tenant stated that they provided the landlord with a written notice of the forwarding address on December 1, 2014, by registered mail, which was successfully delivered.

The tenants stated that the landlord did not return the security deposit or make an application to retain the deposit within 15 days as required. The tenant seeks to recover double the security deposit in the mount of \$850.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

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.

...

(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.

In this case, the landlord had applied for arbitration on February 12, 2015, which was not within 15 days of the end of the tenancy or receipt of the forwarding address, which was deemed received on December 6, 2014.

I find the landlord has breached 38(1) of the Act, when they failed to repay the security deposit or make their application within the statutory timeline. Therefore, I find that the landlord was not entitled to retain any portion of the deposit

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.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of **\$900.00**, comprised of double the security deposit (\$425.00) on the original amount held and to recover the \$50.00 fee for filing this Application.

The tenant is given a formal monetary order pursuant to 67 of the Act, 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.

Conclusion

The tenant's application for return of double the deposit is granted. The tenant is granted a monetary order in the above noted amount.

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 08, 2016

Residential Tenancy Branch

