



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MND and FF

Introduction

This application was brought by the landlord via her agent seeking authorization to retain a portion of the tenant's security deposit which the tenant did not agree to against damages ascertained at the end of the tenancy.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to retain the remaining balance of the security deposit in set off against the claimed damages.

Background and Evidence

This tenancy began on June 18, 2008 and ended on May 31, 2009. Rent was \$2,200 per month and the landlord held a security deposit of \$1,055.04 paid on June 19, 2008.

During the hearing, the parties gave evidence that the tenant had agreed that, after interest was added, the landlord could retain all but \$460.59 of the deposit and they agreed to focus the hearing on that contested portion of it.

The landlord gave evidence that she believed damages substantially exceeded the contested portion of the deposit, but asked only for authorization to retain the balance in full settlement of her claims.

However, on reviewing the contents of the file following the hearing, I note that the move out Condition Inspection Report which was dated May 31, 2009 contained the tenant's forwarding address. I further noted that the landlord's application was made on June 30, 2009, 15 days beyond the allowed time frame.

Analysis

Section 38(1) of the *Act* provides that a landlord has 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to either return or make application to make claim on the security deposit. Section 38(6) provides that if the landlord does not comply with section 38(1), the landlord must pay the tenant double the (unreturned/unsettled portion of) the deposit.

Conclusion

As these provisions were not brought to light during the hearing, and to give the parties an opportunity to review this matter in view of these considerations, I find that the application must be dismissed with leave to reapply.