

Decision

Dispute Codes: MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord. Both the landlord and the tenant appeared and each gave testimony.

Issue(s) to be Decided

The issue to be determined based on the evidence is whether the tenant is entitled to the return of double the security deposit pursuant to section 38 of the Act.

Background and Evidence

The tenancy began on November 1, 2008. Both parties acknowledged that a security deposit of \$500.00 was paid at that time. The tenancy ended on November 30, 2011. The landlord testified that no written forwarding address was given. However, the tenant testified that a forwarding address was provided by email and submitted evidence that this occurred. The tenant testified that a letter containing the tenant's written forwarding address was also sent. In addition the tenant's application for dispute resolution filed on March 28, 2012 contained the tenant's forwarding address in writing.

The tenant testified that a forwarding address was furnished to the landlord but the landlord failed to refund the deposit and did not make an application to keep it within 15 days of receiving the address. The tenant seeks compensation of double the security deposit under section 38(6)(b).

The landlord testified that the rental unit was left in a dirty condition and the landlord incurred costs for cleaning and disposal that should be compensated by the tenant.

Analysis

Security deposits are funds held in trust by the landlord for the tenant. I find that section 38 of the Act clearly states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant and dated at the end of the tenancy, then the landlord's right to merely keep the deposit without filing a claim does not exist.

However, according to the Act, at the end of a tenancy a landlord is at liberty to make an application for dispute resolution seeking to keep the deposit to satisfy a liability or obligation of the tenant. In order to make such a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the later of

when the tenancy ended and the forwarding address was received. Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit, and the landlord did not make application for an order to keep the deposit within the time permitted to do so.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit or making application to retain it within 15 days, the landlord may not make a claim against the deposit, and must pay back double the amount of the security deposit.

The landlord had given testimony and submitted evidence in reference to damages for the condition the rental unit was left in. However, I am not able to hear nor consider evidence with regard to any claims by the landlord relating to damages and loss because this hearing was convened solely to deal with the *tenant's* application under section 38 of the Act. That being said, I must point out that the landlord is still at liberty to make a separate application if the landlord wants to initiate a monetary claim for compensation for damages and loss pursuant to section 67 of the Act.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the security deposit that was wrongfully retained by the landlord, in the amount of \$1,000.00, plus interest of \$1.25 and the \$50.00 cost of the application. The tenant is entitled to total monetary compensation of \$1,051.25.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,051.25 and I hereby issue a monetary order in this amount to the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: May 24, 2012.

Residential Tenancy Branch