



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 dealt with cross applications. The tenant is seeking to an order to have the landlord return double the security deposit. The landlord is seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to a monetary order as claimed?

Preliminary Matter

These parties have been involved in one other hearing. At that hearing the tenant was given leave to reapply due to lack of providing service of documents in accordance with the Act. **The landlords' application was dismissed without leave to reapply** as he chose not to dial in and participate. I questioned the landlord if his claim today is the same as it was on February 19, 2014 at the previous hearing; he responded "definitely, yes it is". This matter has been previously dealt with and not appropriate for me to make a new finding as it falls under res judicata. I must dismiss the landlords' application in its entirety without leave to reapply.

Background and Evidence

The tenant gave the following testimony:

The tenancy began on or about June 20, 2013 and ended on September 1, 2013. Rent in the amount of \$1100.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$550.000. The tenant stated that he provided his forwarding address to the landlord by late September. The tenant is seeking the return of double the security deposit as he is yet to receive it.

The landlord gave the following testimony:

The landlord stated that the tenant gave his forwarding address late but by sometime in late September of 2013. The landlord stated the tenant damaged the suite and he doesn't think he should have to return the deposit.

Analysis

The Tenant said he is applying for the return of double the security deposit as the Landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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.

As the landlord did not file for dispute resolution or return the deposit as required, the tenant is entitled to the return of double the security deposit.

The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant an order under section 67 for the balance due of \$1150.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$1150.00.

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: June 30, 2014

Residential Tenancy Branch

