



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

DECISION

Dispute Codes MNSD

Introduction

This is an application by the Tenant for a monetary order for return of a portion of the security deposit for a total claim of \$150.00.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

Background and Evidence

The Tenant paid a security deposit of \$650.00 on July 15, 2006, and vacated the rental unit on June 30, 2008.

The Landlord had done both required incoming and outgoing condition inspection reports. There was a clause in the written incoming condition inspection report that allowed the Landlord to retain the security deposit at the end of the tenancy term.

When the Tenant moved out, the Landlord retained \$150.00 from the security deposit and returned the balance to the Tenant. The Landlord claimed that some work had to be done on the rental unit when the Tenant moved out, therefore a portion of the security deposit was held.

When the outgoing inspection report was done, an Agent for the Tenant attended on her behalf. The Agent completed the form, and indicated the Tenant did not agree to the alleged damages.

Analysis

An incoming condition inspection report can not be used to automatically have the Landlord keep any portion of the security deposit at the end of the tenancy. Even though both parties agreed to this at the beginning of the tenancy, it is prohibited under section 20 of the Act. Since it is prohibited under the Act, and the parties are prohibited from contracting out of the Act, the clause is unenforceable.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

Therefore, I find that the Landlord has breached the Act and must repay to the Tenant double the amount of the security deposit withheld, plus her filing fee of \$50.00.

I grant and issue an order that the Landlord forthwith pay the Tenant the sum of \$350.00.

Conclusion

The Landlord has breached the Act, and a clause in the written tenancy agreement is void and unenforceable.

I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$350.00**, comprised of double the portion of the unreturned security deposit (\$150.00) and the \$50.00 fee for filing this Application.

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.

September 25, 2008
Date of Decision
