



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the tenant and two landlords.

During the hearing it was noted that the tenant had never received a copy of a completed move out Condition Inspection Report and that the landlord did not provide a copy into evidence. With the agreement of both parties the landlord submitted a copy of the Report after the hearing by facsimile.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy agreement began in March 2008 as a month to month tenancy with rent, at the end of the tenancy, in the amount of \$650.00 per month due on the 1st of each month. A security deposit of \$320.00 was paid on February 4, 2008. The tenancy ended on April 30, 2011.

The landlord testified that the tenant did not provide a forwarding address in writing and that the earliest the landlord had received the forwarding address was when he received a copy of the tenant's Application for Dispute Resolution. The landlord specifically stated the tenant didn't provide an address on the Condition Inspection Report.

The parties agree a move out inspection was completed on the rental unit on April 30, 2011. The Condition Inspection Report lists that the countertop in the kitchen was chipped (as it was at the start of the tenancy) and dirty and the light by the storage needs fixing and no other cleaning or damage is listed. The Report also notes that the inspection was completed on April 30, 2011, is signed by the landlord's agent and the tenant and contains the tenants forwarding address.

The tenant testified that the landlord had failed to return her deposit and so she contacted the landlord's agent who later phoned the tenant and provided her, on June 20, 2011, with a refund of \$164.32 and noted that he had deducted \$155.68 for carpet cleaning. The tenant testified that she had not yet, at the time of the hearing, cashed the landlord's cheque.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit, less any mutually agreed upon deductions (in writing) or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Despite the landlord's testimony, I find, based on the copy of the Condition Inspection Report, that the landlord had the tenant's forwarding address on April 30, 2011 when the condition inspection was completed. As such, I find the landlord failed to comply with Section 38(1).

Further, I find no evidence that the tenant agreed to any deductions in writing from the security deposit and as such the landlord had no right to retain any amount from the deposit held.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$694.35** comprised of \$320.00 security deposit; \$4.35 interest; \$320.00 compensation for failing to comply with Section 38(1) and the \$50.00 fee paid by the tenant for this application. If the tenant is able to negotiate the cheque that she still has in her possession in the amount of \$164.32, this shall satisfy a portion of the above amount.

This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: October 11, 2011.

Residential Tenancy Branch