



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application by the Tenant for a monetary order for return of double the security deposit paid to the Landlord and for the return of the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

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

Background and Evidence

The Tenant paid the Landlord a security deposit of \$325.00 on or about July 1, 2008. The Tenant vacated the premises on October 1, 2012.

The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to, by giving it to the Landlord on or about October 3, 2012.

The Tenant did not sign over a portion of the security deposit.

The Tenant testified that the Landlord performed an incoming condition inspection report at the start of the tenancy.

The Tenant further testified that the outgoing condition inspection report was not completed or signed by her.

The Agent for the Landlord testified that this was the first move out of a renter they had done since they took over managing the building.

The Agent testified that they felt the Tenant had damaged portions of the rental unit and had failed to clean the entire rental unit to a reasonable standard. The Agent testified that when the Tenant did not agree with his request to retain the deposit towards this, they had to consult with the property owner, which took them longer than 15 days.

The Agent for the Landlord testified they did not give the Tenant a written notice of the final opportunity to perform the outgoing condition inspection report.

The Agent testified that the Landlord did not file an Application to keep the deposit, and they did not return it to the Tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

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, as required under section 38.

By failing to comply with the requirements in the Act regarding an outgoing condition inspection report, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 36(2) of the Act.

Therefore, based on all of the above, I find the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or the written agreement of the Tenant.

Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$702.45**, comprised of double the security deposit (2 x \$325.00), \$2.45 in interest on the original amount paid, and the \$50.00 fee for filing this Application.

Conclusion

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.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: February 04, 2013

Residential Tenancy Branch

