



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rivers Inlet Enterprises Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application by the tenants for an order for the return of double their security deposit and an additional monetary award. Both parties participated in the conference call hearing.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on August 11, 2009, at which time a \$600.00 security deposit was paid, and ended on July 31, 2013.

The parties completed a condition inspection report at the beginning and end of the tenancy and at the end, the tenants signed the report indicating that they agreed “with the following deductions”. The tenants testified that at the time they signed the report, they understood that they were agreeing to a deduction of \$305.00. The landlord testified that he left the itemization of deductions blank at the time the tenants signed and on August 8, sent the tenants the report along with receipts showing work that had been performed and advised them that although he had spent in excess of \$800.00 cleaning and repairing the unit, he was only charging them the full amount of the security deposit. The tenants seek an award of double their deposit.

The tenants testified that their car window was broken when they parked in an unsecured parking lot on the property and that the landlord should be responsible because he permitted children to play in the parking area. The landlord testified that there are a significant number of children in the complex and that he has little control over where they play.

The tenants claimed that the landlord promised to pay for the repair of the window. The landlord testified that when the tenants asked him to pay for the bill, he said he would speak with the owner and when the owner refused, he relayed this message to the tenants.

Analysis

Section 38 of the Act provides that unless the landlord receives the tenants' written consent to retain part or all of the security deposit, the landlord is obligated to either return the deposit in full or file a claim with the Residential Tenancy Branch to keep the deposit. The statute provides that the landlord must act within 15 days of the end of the tenancy and the date he receives the tenants' forwarding address or he is liable to pay the tenants double the security deposit.

The landlord acknowledged that at the time the tenants signed the condition inspection report, there was no dollar amount written in the report. The tenants acknowledged that their intent was to agree to a deduction of \$305.00. I find that because the landlord did not have the tenants' written consent to retain all of the deposit, he was entitled to deduct only \$305.00 from the deposit, leaving a balance of \$295.00.

I find that the tenants are entitled to an award of double the balance of the deposit and I award the tenants \$590.00. I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I find that the tenants have failed to prove that their car window was broken as a result of the landlord's negligence. The tenants were well aware that children played in the parking lot and assumed that risk when they parked their car there. The claim for recovery of the cost of replacing the window is dismissed.

Conclusion

The tenants are granted a monetary order for \$590.00.

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: November 22, 2013

Residential Tenancy Branch

