



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 Tenants 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, under the *Residential Tenancy Act* (the "Act").

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 Tenants paid the Landlord a security deposit of \$375.00 on or about May 31, 2012. The Tenants vacated the premises on July 31, 2013.

The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it in the mail to the Landlord in September of 2013. The Tenants did not sign over a portion of the security deposit.

The Tenants testified that the Landlord did not perform an incoming or outgoing condition inspection report.

The Landlord testified he was not sure if he received the forwarding address of the Tenants in writing, as he often works in another province and does not always get his mail. He testified that if he had wanted to return the security deposit to the Tenants he had plenty of ways to contact them, by email or by phone, and he could have found their address. He testified that he tried to negotiate with the Tenants for the deposit, but they could not agree. The Landlord testified he was certain it cost him much more money than the security deposit to clean up the rental unit and make repairs, so he had no intention of returning the deposit to the Tenants.

The Landlord testified he had not filed an Application to claim against the deposit or for the other alleged cleaning or repair costs.

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 Tenants 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 perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

Therefore, 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 Tenants 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. If the Landlord and Tenants are unable to agree to the repayment of the security deposit or to deductions to be made from it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims.

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 with 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 section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$800.00**, comprised of double the security deposit (2 x \$375.00) and the \$50.00 fee for filing this Application.

Conclusion

The Landlord breached the Act by failing to deal with the security deposit in accordance with section 38. The Landlord must return double the security deposit to the Tenants and pay the filing fee for the Application. The Landlord still has liberty to file a claim for the alleged losses arising from the tenancy; however, the security deposit issue has now been dealt with in this decision.

The Tenants are 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 06, 2014

