Dispute Resolution Services

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, the interest payable and for the return of the filing fee for the Application.

Only the Tenant appeared at the hearing. The Tenant provided affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified and supplied documentary evidence that he served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on March 21, 2014, and deemed received under section 90 of the Act five days later. The Tenant testified that the registered mail was not claimed by the Landlord, although they had exchanged text messages and the Tenant informed the Landlord these documents were coming in the mail. I note that neglect or refusal to accept registered mail is not a ground for review under the Act. Therefore, I find the Landlord has been duly served in accordance with the Act.

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 $400.00 on or about August 1, 2007. The Tenant vacated the premises on or about January 31, 2014.

The Tenant testified that he had been paying the Landlord rent by interact payments through their email accounts. He testified that the Landlord had this information to return the deposit to. He testified that 17 days after the tenancy had ended the

Landlord tried to pay him back a portion of the security deposit using this method, although the Tenant would not accept the partial payment proposed by the Landlord.

In evidence the Tenant provided excerpts of text and email messages exchanged between himself and the Landlord.

The Tenant testified he did not sign over a portion of the security deposit. The Tenant testified that the Landlord did not perform an incoming condition inspection report. He testified that the Landlord alleged he had done one, but the Tenant was not involved in this if it occurred. The Tenant testified he received no written notice of a final opportunity to perform the outgoing condition inspection report from the Landlord.

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.

I find the parties had established a pattern of communicating by email and text message. I find that at the end of the tenancy the Landlord had the information required to return the security deposit and interest to the Tenant, but did not do so and breached the Act.

In any event, by failing to perform an incoming condition inspection report in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to section 24(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 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. Furthermore, contrary to the written message of the Landlord, all landlords are required to retain the deposit in an interest bearing account.

If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to 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, and simply keep it, 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 and must return double to the Tenant, as well as interest payable on the original amount held.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **$858.56**, comprised of double the security deposit (2 x $400.00), interest from August 1, 2007, in the amount of $8.56, 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: July 07, 2014

Residential Tenancy Branch