



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the Landlord for a monetary order to retain the security deposit and to recover the filing fee for the claim.

At the outset of the hearing the Landlord, M.Z., advised that K.M. had passed away in February of 2015. The Tenants also appeared at the hearing. M.Z. (hereinafter referred to as the "Landlord") spoke on behalf of the Landlords, gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and make submissions at the hearing. At the conclusion of the Landlord's submissions I determined it was not necessary to hear from the Tenants.

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

Issues to be Decided

1. Is the Landlord entitled to retain the \$800.00 security deposit?
2. Should the Landlord recover the fee paid to file her application?

Background and Evidence

The Landlord did not submit any evidence. She testified that she had receipts, but that she missed the deadline for filing and therefore intended to rely on her oral testimony. She also did not provide a copy of the residential tenancy agreement in evidence.

The Landlord testified that the tenancy began on May 1, 2010. The monthly rent was \$1,600.00 and the Tenants paid a security deposit of \$800.00 on May 1, 2010.

The Landlord confirmed that the Tenants vacated the premises on September 30, 2014. The Landlord further confirmed that immediately after vacating the rental unit, the Tenants provided her with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The Landlord testified that she did not perform an incoming condition inspection report. She stated, however, that she did perform an outgoing condition inspection report on October 5, 2014. The outgoing report was not in evidence.

The Landlord sought to retain the security deposit and to apply the funds towards the costs she says she incurred to clean the rental unit. The Landlord did not apply for a monetary order pursuant to section 67, and as such, the only claim before me was her claim against the security deposit and to recover the filing fee.

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.

By failing to perform the incoming condition inspection report the Landlord has extinguished her right to claim against the security deposit, pursuant to section 24(2) of the Act.

Similarly, 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. Here the landlord did not have any authority under the Act to keep any portion of the security deposit and in fact extinguished her right to claim against it. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

During the hearing I indicated the Tenants would need to make an application for double the security deposit. On further reflection, and pursuant to section 78, I have determined this is not necessary. Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

As the Landlord was not successful, I decline her request to recover the fee she paid to file her application.

Should the Landlord wish to obtain compensation for cleaning costs and other such loss or damages, she must make an Application for Dispute Resolution requesting a Monetary Order pursuant to section 67.

Conclusion

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 \$1,600.00, comprised of double the security deposit. The Landlord's application for recovery of the filing fee is dismissed.

The Tenants are given a formal Monetary 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.

Dated: May 07, 2015

Residential Tenancy Branch

