



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.

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

The Tenant testified and supplied documentary evidence that she served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on December 14, 2015. The Tenants' documentary evidence indicates the registered mail was not claimed by the Landlord. I note that neglect or refusal to accept registered mail does not negate service and pursuant to section 90 of the *Residential Tenancy Act*, documents served by registered mail are deemed served five days later; accordingly, I find the Landlord was served as of December 19, 2015 and I proceeded in her absence.

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 to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlord entitling the Tenants to return of double their security deposit paid?
2. Are the Tenants entitled to recovery of the filing fee paid for their application?

Background and Evidence

The Tenant testified that the tenancy began November 1, 2015. She further testified that monthly rent was payable in the amount of \$1,200.00 per month and they paid the Landlord a security deposit of \$600.00 before the tenancy began. The Tenants vacated the premises on November 29, 2015.

The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it registered mail to the Landlord on November 27, 2015. A copy of this letter was provided in evidence.

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

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

Analysis

Section 38 of the *Residential Tenancy Act* provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

- (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].
- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

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. In failing to do so, the Landlord has breached section 38(1) of the *Act*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlord also extinguished her 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 security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants or an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator

authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any such authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38(6) and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,250.00**, comprised of double the security deposit (2 x \$600.00) and the \$50.00 fee for filing this Application.

Conclusion

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: July 12, 2016

Residential Tenancy Branch