



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant for the return of double his security deposit and to recover the filing fee from the Landlord. The Landlord, the Landlord's agent, and the Tenant appeared for the hearing and provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings. The Landlord confirmed receipt of the Tenant's Application and the Tenant's documentary evidence which was served prior to this hearing.

The Landlord testified that he had provided documentary evidence for this hearing. However, there was no evidence before me from the Landlord, and the Tenant confirmed that he had not received any evidence from the Landlord relating to this file. On further questioning, it appears that the Landlord was intending to rely on evidence for this hearing that he had served late for a previous hearing held between the same parties by me on January 21, 2016 (the file number for which appears on the front page of this decision). The Landlord explained that his documentary evidence related to the reasons why he had kept the Tenant's security deposit and that he would use this evidence to make his own application against the Tenant for damage to the rental unit. The hearing continued with the oral evidence of the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

Both parties agreed that this tenancy started on September 1, 2013 as a month to month tenancy. Rent on the tenancy agreement was \$1,500.00 but the Tenant testified that this was reduced to \$1,400.00 payable on the first day of each month. The Tenant paid a security deposit of \$750.00 on September 1, 2013. The parties' completed a move in condition inspection at the start of the tenancy.

The Tenant testified that he provided written notice in a letter dated August 26, 2015 to end the tenancy for September 30, 2015. This was sent to the Landlord by registered mail and detailed the Tenant's forwarding address where the security deposit could be returned to. The Landlord confirmed receipt of the Tenant's letter which detailed his forwarding address, although he argued the validity of the address the Tenant had provided.

The Landlord testified that prior to the ending of the tenancy a note was posted on the Tenant's door explaining that a move-out condition inspection of the rental unit would be completed on October 1, 2016. The Tenant denied receipt of this notice and testified that no move-out condition inspection was scheduled with him. The Landlord testified that throughout this tenancy, the Tenant continued to lie about receiving notices on the door as he wanted to avoid the Landlord and his obligation to appear for the move-out condition inspection. The Landlord was asked why he had used this method of service to serve the Tenant for the move-out condition inspection when he was aware that the Tenant would claim he had not received it. The Landlord replied stating his understanding was that this was the only method he could use as he had been informed by the police to avoid any personal contact with the Landlord. The Tenant disputed this testimony.

When the Landlord was asked whether he had made an application to claim against the Tenant's security deposit, the Landlord explained that he assumed that because the Tenant had caused damage to the rental unit, the Tenant had automatically forfeited it.

Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on September 30, 2015 through the Tenant's notice to end tenancy. I find the Landlord was served with the Tenant's forwarding address in writing documented on the Tenant's notice to end tenancy which the Landlord confirmed receipt of. Therefore, the Landlord was required to deal properly with the Tenant's security deposit pursuant to the Act.

There is no evidence before me that the Landlord made an Application within 15 days of receiving the Tenant's forwarding address or obtained written consent from the Tenant to retain it. Therefore, I must find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

Part 3 of the *Residential Tenancy Regulation* details how condition inspections are to be arranged and conducted. Furthermore, Section 36 of the Act explains the consequences for a party if the reporting requirements of the Act are not followed. Section 36(2) states:

“Unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
(a) does not comply with section 35 (2) [2 opportunities for inspection]
(b) having complied with section 35 (2), does not participate on either occasion, or
(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.”

[Reproduced as written]

The Landlord argued that the Tenant was put on notice of a move-out condition inspection that was scheduled to take place the day after the tenancy ended. However, the Tenant disputed that such an inspection was scheduled. In this respect, I find the Landlord failed to provide sufficient evidence that the Tenant had been informed and given an opportunity, or a second opportunity, to appear for a move-out condition inspection. I find it puzzling why in the Landlord's testimony he opted to serve the Tenant with such a vital notice in a manner which he suspected the Tenant would later refute. Under the Act, a landlord has a number of methods for service of documents, most of which require no personal contact with the person being served or allow for the service to be effected by a third party, which the Landlord failed to use. Based on the foregoing, I am only able to conclude that the Landlord failed to comply with Section 36(2) 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 was held in trust for the Tenant by the Landlord. At no time does a 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 a landlord and a tenant are unable to agree to the repayment of it or to make deductions from it, the landlord must comply with Section 38(1) of the Act. It is not enough that a landlord

feels they are entitled to keep it, based on unproven claims. A landlord may only keep a security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of a tenant. Here the Landlord did not have any authority under the Act to keep the Tenant's security deposit.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenant is entitled to double the return of their security deposit in the amount of \$1,500.00.

As the Tenant has been successful in this matter, I also allow the Tenant to recover the \$50.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the Tenant is issued with a Monetary Order for \$1,550.00. This order must be served on the Landlord. The Tenant may then file and enforce the order in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment. Copies of the order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Tenant is granted a Monetary Order of \$1,550.00 for double the amount back plus the filing fee.

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: June 06, 2016

Residential Tenancy Branch