

DECISION

Dispute Codes: MNSD

Introduction

This is an application by the Tenants for a monetary order for return of double the security deposit paid to the Landlord, plus interest on the security deposit and their filing fee for this application.

Both parties appeared, gave 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.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

Background and Evidence

The Tenants paid a security deposit of \$460.00 on August 1, 2008. The Tenants vacated the premises on or about January 17, 2009.

The Landlord did not perform incoming or outgoing condition inspection reports.

The Tenants provided the Landlord 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 Agent for the Landlord testified that the Tenants orally agreed to deduct a portion of the security deposit for oven cleaning and utilities. The Tenants deny any such oral agreement.

Analysis

There was no evidence to show that the Tenant had agreed, in writing as required by the Act, that the Landlord could retain any portion of the security deposit, plus interest.

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 Tenants, to retain a portion of the security deposit, plus interest.

The Landlord deducted funds from the Tenants' security deposit, and returned \$333.08 of the deposit to them. The Landlord did not include the interest required under the Act.

Conclusion

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.

I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

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 **\$972.88**, comprised of double the security deposit (\$460.00 x 2), the interest on the original amount held (\$2.88), and the \$50.00 fee for filing this Application.

If the Tenants have cashed the cheque for \$333.08, it may be offset from the Order and the Landlord must pay the balance of \$639.80 to the Tenants.

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 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: May 05, 2009.

Dispute Resolution Officer