

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application by the Tenants for a monetary order for return of the security deposit, prorated rent and their filing fee for the claim.

The Tenant served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on April 3, 2009, and deemed received under the Act five days after mailing. Despite being duly served, the Landlord failed to attend the hearing.

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 \$600.00 on January 30, 2009. The Tenants vacated the premises on March 12, 2009. 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 Tenants gave a Notice to End Tenancy to the Landlord due to problems at the rental unit with a leaky roof. The Landlord and the Tenants signed an agreement that the rent would be prorated if they moved out earlier. They moved out three days earlier.

On March 12, 2009, the Tenants gave their forwarding address in writing to the Landlord.

The Landlord did not file an Application for Dispute Resolution to keep the security deposit within 15 days of the end of the tenancy or receiving the security deposit.

No outgoing condition inspection report was performed.

Analysis

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, plus interest.

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. I further find the Landlord owes the Tenants prorated rent, as agreed to in the document signed by both parties.

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 **\$1,355.00**, comprised of double the security deposit (\$600.00 x 2), \$105.00 for prorated rent and the \$50.00 fee for filing this Application.

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: June 15, 2009.

Dispute Resolution Officer