

DECISION

Dispute Codes

MNSD

Introduction

This is an application by the Tenant for a monetary order for return of the security deposit, return of pro-rated rent and her 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 23, 2009 and deemed received under the Act five days later. Despite this, the Landlord did not appear.

The Tenant provided affirmed testimony and documentary evidence in support of her claim.

Issue(s) to be Decided

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

Is the Tenant entitled to pro-rated rent?

Background and Evidence

The Tenant paid a security deposit of \$400.00 to the Landlord on May 1, 2007.

The Tenant had given her Notice to End Tenancy on or about February 15, 2009, although due to the late Notice, she paid her rent to the end of March to comply with the one month Notice provisions of the Act. She vacated the premises on March 1, 2009.

She testified she returned to the unit in late March to clean the carpets, however, the Landlord had already begun renovations to the unit and had torn out the carpets.

The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to in a letter dated March 30, 2009, and did not sign over a portion of the security deposit.

Analysis

There was no evidence to show that the Tenant had agreed, in writing, 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 Tenant, to retain a portion or all of the security deposit, plus interest.

The Tenant had possession of the unit until the end of March because she had paid rent till then. Although she was not living in the unit, the Landlord could not begin renovations in the unit during her dates of possession. In this circumstance, I find the Landlord may not use the Tenant's possession of the unit to subsidize or begin renovations, without compensation to the Tenant.

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. I also find he must return a portion of the rent paid to the Tenant

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 **\$1,039.65**, comprised of double the security deposit (\$400.00), the interest on the original amounts held (\$10.09), seven days of pro-rated rent (\$179.56) and the \$50.00 fee for filing this Application.

The Tenant is 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: July 28, 2009.

Dispute Resolution Officer