

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenants applied for return of double their security deposit, and the return of their filing fee.

The Landlord applied for a monetary order for alleged damages to the property and to keep all or part of the security deposit.

The hearing was scheduled to begin at 9:00 a.m. via telephone conference call. The Tenants appeared at 9:00 a.m., however, the Landlord was not present at the start of the hearing and it proceeded in his absence pursuant to the rules of procedure. The Tenants provided affirmed testimony.

The Landlord did call into the hearing some six or seven minutes after it had commenced. He claimed his clock read only one minute past 9:00 a.m. Nevertheless, by this time the hearing had concluded as a determination had been made in the Tenants' Application and it had been determined that the Application of the Landlord should be dismissed for failing to appear. Therefore, the Landlord's claim is dismissed with leave to reapply.

Issues(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 \$400.00 on March 1, 2009. The Tenants vacated the premises on May 15, 2009. The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to on May 15, 2009, and did not sign over a portion of the security deposit.

The Landlord did not complete incoming or outgoing condition inspection reports in accordance with the Act or regulation.

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, 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 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. There is no interest payable on this security deposit as it was received in 2009.

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 **\$850.00**, comprised of double the security deposit 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: August 06, 2009.

Dispute Resolution Officer