

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the Tenant for a monetary order for return of double the security deposit and her filing fee for the claim.

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 Tenant paid the Landlord a security deposit of \$440.00 on August 17, 2008. The Tenant vacated the premises on June 1, 2009.

The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to on June 1, 2009, by leaving it in the mailbox of the Landlord where the Landlord carries on business.

The Tenant contacted the Landlord on June 6, 2009, to enquire about the return of her security deposit. The Landlord had not checked the rental unit over yet.

After checking out the unit, the Landlord claimed the Tenant left the unit dirty as she had not cleaned the carpet or the drapes, and she put large holes in the walls. He wanted to keep \$250.00 of the deposit for these items.

On June 15, 2009, the Tenant signed an agreement with the Landlord that he could keep \$250.00 of the deposit, and \$190.00 would be returned to the Tenant.

A few hours after signing the agreement the Tenant called the Landlord and wanted to cancel the agreement, as she thought the Landlord was charging her too much. The Landlord refused to cancel the agreement. However, he did not return the balance due to the Tenant because she filed for Dispute Resolution and he wanted to wait for the outcome of the hearing.

Analysis

There was evidence to show that the Tenant had agreed, in writing, that the Landlord could retain \$250.00 from the deposit.

However, the Landlord breached the Act by not returning to the Tenant the balance of \$190.00 or the interest payable. I further find the Landlord breached the Act by not performing the required incoming or outgoing condition inspection reports.

Therefore, I find that the Landlord must pay the Tenant double the balance of the deposit due, plus the interest on the original amounts held, pursuant to section 38 of the Act.

I find that the Tenant has established a total monetary claim of **\$432.47**, comprised of double the balance of \$190.00, interest of \$2.47 on the original amount and the \$50.00 fee paid by the Tenant for this application.

I grant the Tenant an order under section 67 for the balance due of **\$432.47**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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.

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: October 20, 2009.

Dispute Resolution Officer