

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for the return of their security deposit and a Monetary Order to recover the filing fee.

The tenants served the landlord by registered mail on November 20, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Are the tenants entitled to recover the security deposit of \$337.50?

Background and Evidence

This month to month tenancy started on December 15, 2007. Rent for this unit was \$675.00 per month and was due on the first of each month. The tenants paid a security deposit of \$337.50 on December 15, 2007.

The female tenant claims they decided to end the tenancy as they had found another place to rent. She claims she gave the landlord written notice to end the tenancy on

October 01, 2009 by leaving it in the landlords' door. This Notice informed the landlord that they would be vacating the unit on October 31, 2009. The tenant claims she followed this notice up with a phone call and left a message on the landlords' voice mail and with the landlords' son.

The tenant claims she cleaned the house, made repairs to the walls and a door and cleared her sons' sandbox by tipping the sand onto the garden. The tenant claims she asked the landlord to do an inspection. The tenant claimed the landlord did not do either a move in or a move out condition inspection.

The tenant states that the first letter they gave the landlord did not have their forwarding address. She claims she gave him their forwarding address over the telephone and in another letter contained in the hearing package. This address is also the same address contained on the application for this hearing and is the same address the landlord came to when he brought the tenants a letter about the cleaning and damages he alleges they caused.

The landlord agrees that he did not do the move in or move out condition inspections. The landlord states that the tenancy agreement states that a tenant must clean the carpets at the end of the tenancy and these tenants failed to do so. The landlord claims the tenants did not clean the unit properly at the end of the tenancy, caused some damage to the unit and had emptied their cat litter box on the garden. The landlord claims he kept the tenants security deposit to pay for these costs incurred.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; Sections 23(4), 35(3) of the Act require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign

the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the Act. Consequently, s. 24(2)(a) and s. 36(2)(a) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution.

I find that the landlord did receive the tenants forwarding address in writing with the letter contained in the hearing package. As this was sent by registered mail the landlord is not deemed to have been served this until five days after posting. As it was posted on November 20, 2009 I find the landlord received it on November 25, 2009. As a result, the landlord had until December 10, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security deposit by this date; consequently, pursuant to section 38 of the *Act*, the landlord must return the tenants security deposit and any accrued interest.

As the tenants have been successful with their claim they are also entitled to recover the \$50.00 filing fee from the landlord. A Monetary Order has been issued for the following amount:

Security deposit	\$337.50
Filing fee	\$50.00
Total amount due to the tenants	\$392.81

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$392.81**. The order must be served on

the respondent and is enforceable through the Provincial Court 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: March 26, 2010.

Dispute Resolution Officer