

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.

The Tenant served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on November 4, 2009, and deemed received under the Act five days later. The Tenant provided documentary evidence that the Landlord had refused receipt of the registered mail and it was returned to the Tenant. I find the Landlord has been served in accordance with the Act. I also note that refusing registered mail is not a ground for review under the Act.

The Tenant gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to 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 a security deposit of \$250.00 to the Landlord in June of 2009.

The Tenant vacated the premises on September 29, 2009. The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to on that same date, and did not sign over a portion of the security deposit.

The Landlord did not perform incoming or outgoing condition inspection reports.

Analysis

Based on the foregoing, the affirmed testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached section 38 of the Act.

There was no evidence to show that the Tenant 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.

By failing to perform condition inspection reports the Landlord has also extinguished any claim to the security deposit.

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.

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 **\$550.00**, comprised of double the security deposit 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: March 10, 2010.

Dispute Resolution Officer