

DECISION

Dispute Codes MNSD

Introduction

This is an application by the Tenant for a monetary order for return of double the security deposit paid to the Landlord.

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 a security deposit of \$250.00 on July 1, 2008. The Tenant vacated the premises on July 30, 2009.

At the end of the tenancy, the Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit to the Landlord.

Neither party could recall if there was an incoming condition inspection report done, although the parties agreed no outgoing condition inspection report was performed.

The Agent for the Landlord testified that the Landlord misunderstood how to deal with the security deposit at the end of the tenancy. The Agent testified that the Landlord did not return the security deposit or file a claim against it.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached sections 36 and 38 of the Act, by failing to conduct an outgoing condition inspection report, and by failing to return to the Tenant the security deposit and interest in accordance with the Act. I allow the Tenant's Application.

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 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 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 **\$501.89**, comprised of double the security deposit (2 x \$250.00) and the interest on the original amount held (\$1.89).

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.

Lastly, I enclose a copy of a guidebook to the Act for the Landlord's future reference.

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: April 16, 2010.

Dispute Resolution Officer