

DECISION

Dispute Codes MNSD, FF

Introduction

This is an Application by the Tenants for a monetary order for return of double the security deposit and the filing fee paid 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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

Background and Evidence

This tenancy began on July 1, 2004, with the Tenants entering into a written tenancy agreement with the previous owners of the property. The Tenants paid a security deposit of \$550.00 on June 14, 2004, according to the tenancy agreement. The property was sold to the respondent Landlords on or about March 30, 2007.

The Landlords gave the Tenants a two month Notice to End tenancy for Landlords' use on or about September 24, 2009, to be effective on November 30, 2009. The Tenants gave the Landlord notice they were vacating the rental unit earlier, and vacated the rental unit on November 16, 2009.

Both parties were at the rental unit on November 16, 2009, for the outgoing condition inspection report.

The Tenants refused to sign the outgoing condition inspection report as they did not agree to the deductions from the security deposit that the Landlords wanted to make.

The Landlords claim that the Tenants did not participate in the outgoing report, as they refused to walk through the rental unit with the Landlords, although the Tenants were in attendance at the unit.

The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to on November 3, 2009, and did not sign over a portion of the security deposit.

Sometime after November 16, 2009, the Landlords made deductions from the security deposit and interest, and then mailed the Tenants a cheque in the amount of \$392.56 on or about November 30, 2009. The Tenants received the cheque on or about December 22, 2009, and have cashed it.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Landlords have breached section 38 of the Act.

The security deposit and interest are held in trust for the Tenants by the Landlords. They may not make deductions from the security deposit and interest, unless they have a right to do so under the Act, such as having the written authority from the Tenants to do so or an order from a Dispute Resolution Officer to make deductions from the deposit. Here the Landlords established no such right to make deductions.

The Landlords had 15 days from the later of the end of the tenancy or receipt of the forwarding address of the Tenants to either return the deposit and interest or file a claim against it.

The fact that the Tenants refused to sign over a portion of the deposit and interest should have also alerted and motivated the Landlords to file an Application to claim against the deposit and interest within the required 15 days under section 38 of the Act. Nevertheless, the Landlords did not file such a claim.

I further find that the Tenants did attend the rental unit for the outgoing condition inspection report and therefore they “participated” in it as defined in the Act. The fact the Tenants did not walk through the property with the Landlords, or agree to the deductions the Landlords wanted to make, or would not sign the report, does not mean they failed to participate in the report.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$776.93**, comprised of double the security deposit ($2 \times \$550.00 = \$1,100.00$) the interest on the original amounts held (\$19.49), and the \$50.00 fee for filing this Application, **less** the \$392.56 previously paid by the Landlords.

The Tenants are given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords 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: April 23, 2010.

Dispute Resolution Officer