

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution made by the Tenants for a monetary order for return of double the security deposit and the filing fee for the Application.

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

The Tenants paid a security deposit of \$350.00 to the Landlord on October 14, 2009.

The parties had a verbal Tenancy Agreement which was to start on November 1, 2009.

On or about October 28, 2009, the Tenants informed the Landlord that they did not want to move into the rental unit because one of the Tenants had suffered a back injury and the rental unit was no longer suitable.

One of the Tenants then met with the Landlord and presented an alternate renter. The Landlord accepted the alternate renter, and the alternate renter paid a security deposit and has paid the Landlord rent since then.

The Tenants provided their forwarding address in writing to the Landlord on November 26, 2009. The Tenants did not sign over a portion of the security deposit.

The Landlord refused to return the security deposit as he alleges that the alternate renter he accepted is going to cost him more money in the long run, as she is a smoker and has pets. Nevertheless, the Landlord testified that he received the security deposit and rent for November of 2009 from the alternate renter proposed by the Tenants.

Analysis

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

Under this section of the Act the Landlord has 15 days from the end of the tenancy and the receipt of the Tenants' forwarding address to either return the security deposit, or file an Application against the deposit.

The Landlord holds the security deposit in trust for the Tenants. The Landlord has no authority to keep the security deposit unless given a right to do so under the Act. Here the Landlord had no such right.

The Landlord suffered no loss due to the Tenants. The Tenants provided an alternate renter for the same time the tenancy was to occur. If the Landlord did not want to choose the alternate renter, he could have rejected the proposed renter and claimed against the Tenants for loss of rent. The Landlord accepted the alternate and had insufficient evidence to show he incurred any loss due to the Tenants not moving in. Any alleged damage caused by the alternate renter is the responsibility of the alternate renter, not the Tenants in this situation.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$750.00**, comprised of double the security deposit (2 x \$350.00) and the \$50.00 fee for filing this Application.

The Tenants are 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: May 12, 2010.

Dispute Resolution Officer