



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application for return of their security deposit and recovery of the filing fee paid for this application. One tenant appeared at the hearing on behalf of both applicants. The landlord did not appear at the hearing although the landlord had provided documentary evidence in response to the tenants' application. The tenants provided a copy of a registered mail receipt and tracking number as evidence of service of the hearing documents. Having been satisfied the landlord was served with the hearing documents in a manner that complies with the Act, I proceeded to hear from the tenant without the landlord present.

Issues(s) to be Decided

Are the tenants entitled to return of the security deposit?

Background and Evidence

The tenant provided the following testimony. The tenancy commenced June 7, 2005 and the tenants paid a \$550.00 security deposit at the commencement of the tenancy. At the beginning of the tenancy a walk-through inspection was conducted by the parties; however, the landlord did not prepare or provide the tenants with a condition inspection report. On January 22, 2010 the tenants delivered a written notice to end tenancy to the landlord with an effective date of February 28, 2010 and on the notice to end tenancy was the tenants' forwarding address. The landlord would not accept the written notice to end tenancy and gave it back to the tenants. A verbal discussion ensued whereby

the landlord communicated to the tenants that if they moved out early he could finish the basement in the rental unit. The tenants vacated the rental unit January 31, 2010. Subsequent to vacating the rental unit, the tenants made several attempts to contact the landlord via telephone and at his office to no avail. On March 8, 2010 the tenants provided their forwarding address to the receptionist at the landlord's office along with their phone number. The landlord would not return their calls. Finally, the tenants made contact with the landlord on March 10, 2010 and during that telephone conversation the landlord communicated to the tenants that he would not be returning the security deposit as the tenants had damaged the rental unit.

Upon enquiry, the tenant affirmed that the landlord was not provided written consent to retain the security deposit and that no portion of the security deposit has been returned to them. The tenant stated that if entitled to return of double the security deposit the tenants waived their entitlement to double and were requesting return of only the original deposit.

As evidence for the hearing the tenants provided a written synopsis of events in the details of dispute and copies of a real estate listing for the rental unit appearing on the internet after the tenancy ended, including pictures of the rental unit. Also provided were other photographs of the garden area taken a couple of years ago.

The landlord provided photographs as evidence for this hearing and a detailed response to the tenant's details of dispute. Most of the landlord's submissions relate to the condition of the garden and some other damages in the rental unit. The landlord also speaks of ending the lease early and explaining that the tenants paid rent for February 2010 because they gave verbal notice to end tenancy. The landlord explained that he would have taken more photographs if the "damage deposit" was going to be a "problem issue."

Analysis

The purpose of this hearing was to hear the tenants' application for dispute resolution and determine whether the landlord complied with the Act with respect to handling the security deposit. As the tenant was informed at the hearing, the landlord's claims of damages are not issues for me to determine with this hearing as the landlord has not made an Application for Dispute Resolution.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damages if the landlord has met the inspection report requirements. In this case I heard that a move-in inspection report was not prepared or provided to the tenants; thus, the landlord extinguished his right to seek the tenants' consent to make deductions from the security deposit for damages. Accordingly, the landlord was required to comply with section 38(1) of the Act by either returning the security deposit and interest to the tenants or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenants' forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. However, in this case the tenant expressly waived any entitlement to doubling of the security deposit and I do not further consider doubling of the deposit.

I find that the tenancy ended January 31, 2010 when the tenants vacated the unit. However, less clear is when the tenants first provided the landlord with a forwarding address in writing. The tenant claims it was provided when the written notice to end tenancy was given to the landlord January 22, 2010. The landlord submitted that verbal notice to end tenancy was received from the tenant. The tenant submitted that the forwarding address was given to the landlord's receptionist on March 8, 2010. The

landlord does not confirm nor deny receiving the tenants' forwarding address on or about March 8, 2010. However, what is clear to me is that the tenants' forwarding address appears on the Tenant's Application for Dispute Resolution and I have concluded that the landlord was served with the Tenant's Application for Dispute Resolution. The Application for Dispute Resolution is deemed to have been received by the landlord five days after it was mailed in accordance with section 90 of the Act. Therefore, the landlord received the tenants' forwarding address in writing on April 25, 2010.

Since more than 15 days have passed since April 25, 2010 and the landlord has not returned the tenants' security deposit or made an Application for Dispute Resolution to retain it the tenants are entitled to a Monetary Order for return of their security deposit. In accordance with the Act, the landlord is also obligated to pay interest on the amount of the original deposit which I calculate to be \$19.48. As the tenants were successful in this application I award the \$50.00 filing fee to the tenants.

The landlord is hereby ordered to pay the tenants the sum of \$619.48 forthwith. Enclosed with the tenants' copy of this decision is a Monetary Order in the total amount of \$619.48 to serve upon the landlord. If payment is not made the tenants may file the Monetary Order in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenants were successful in this application and have been provided a Monetary Order in the amount of \$619.48 to serve upon the landlord.

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: August 26, 2010.

Dispute Resolution Officer