



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This is an Application by the Tenant for a monetary order for return of double the security deposit and the 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 April 15, 2010, which is deemed received under the Act five days later, whether or not the registered mail is accepted or refused. I find the Tenant has served the Landlord in accordance with the Act.

The Tenant appeared, gave affirmed testimony and was provided the opportunity to present 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 the Landlord a security deposit of \$775.00 on or about March 1, 2009. I note no interest accrues under the regulation in 2009.

The Tenant vacated the premises on February 28, 2010. 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.

The Landlord kept some of the security deposit and returned the balance of \$556.60 to the Tenant. The Tenant cashed that cheque.

The testimony of the Tenant was that the Landlord did not perform either incoming or outgoing condition inspection reports.

Analysis

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

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act. Here the Landlord did not have authority under the Act to keep any portion of the security deposit.

For example, 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 incoming or outgoing condition inspection reports the Landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

I find 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.

Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Conclusion

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 **\$1,043.40**, comprised of double the security deposit (2 x \$775.00), plus the \$50.00 fee for filing this Application, **less** the amount returned to the Tenant of \$556.60.

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: August 17, 2010.

Dispute Resolution Officer