



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD

FF

Introduction

This is the Tenant's application for a Monetary Order for double the security deposit from the Landlord.

The parties provided affirmed testimony at the Hearing.

Issue(s) to be Decided

- (1) Is the Tenant entitled to a monetary order pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

The parties agreed that the Tenant paid a security deposit in the amount of \$290.00 on September 1, 2009, and that on May 5, 2010, the Landlord returned \$52.10 of the security deposit to the Tenant.

The Tenant testified that she provided the Landlord with written notification of her forwarding address on April 15, 2010. The Landlord testified that he didn't receive written notification of the Tenant's forwarding address until sometime in May, 2010.

The parties agreed that on April 15, 2010, the Tenant gave the Landlord short notice that she would be moving out of the rental unit by the end of April, 2010.

The Landlord testified that he worked hard to find a new tenant quickly for the rental unit and was able to re-rent it for April 27, 2010. The Landlord testified that the Tenant assured him that she would be out by April 26, 2010. The Landlord stated that he arranged to do the move out inspection with the Tenant on April 26, 2010. He stated that when he arrived at the rental unit, the Tenant was nowhere near ready for the inspection, so he told her he would return at 11:00 a.m. on April 27, 2010, for the inspection. The Landlord testified that when he returned the next morning, the Tenant still wasn't ready. The Landlord stated that he was concerned because his new tenants were supposed to move in on April 27th and the rental unit was not ready. He told the Tenant he would return at 4:00 p.m. When he returned, the Tenant was gone and the rental unit was not left in a state of reasonable cleanliness. The Landlord testified that he hired a carpet cleaner to come in and clean the carpets on short notice and that the new tenants moved into the rental unit at 9:00 p.m. with wet carpets.

The Tenant testified that the Landlord did not attend at the rental unit for the purposes of doing the move-out inspection and that he did not provide her with two opportunities to do the move-out inspection.

The Tenant testified that the Landlord did not provide her with a copy of the move-out condition inspection report.

Analysis

Section 38(2) of the Act states that a tenant's right to the return of a security deposit is extinguished if the tenant fails to participate in a move-out condition inspection.

I prefer the testimony of the Landlord with respect to the opportunities given for a move-out inspection. I find on the balance of probabilities, that the Landlord attended at the

rental unit on April 26 and on April 27 (twice) for the purposes of doing a move-out inspection. When he returned at 4:00 p.m. on the 27th of April, the Tenant was gone. Therefore I find that the Tenant extinguished her right to return of the security deposit.

The Landlord acknowledged that he did not provide the Tenant with a copy of the move-out condition inspection form which is a breach of the Act, but I find that the Tenant breached the Act first by failing to participate in the move-out inspection after being provided with two opportunities to do so.

Having found that the Tenant has extinguished her right to return of the security deposit, I dismiss the Tenant's application.

Conclusion

The Tenant's application is dismissed.

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: October 28, 2010.
