



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, O

Introduction

This is an application by the Tenant for a monetary order for return of double the security deposit.

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 parties entered into a simple, written tenancy agreement which began on July 5, 2009. The Tenant paid a security deposit of \$400.00 on July 5, 2009, and the monthly rent was agreed upon at \$800.00.

The Tenant testified she vacated the premises on March 30, 2010, after she had given the Landlord a one month Notice to End Tenancy.

The Tenant testified she had not served the Landlord with her forwarding address until she filed and served her Application. The Tenant testified she did not sign over a portion of the security deposit to the Landlord.

Both parties agreed that there were no incoming or outgoing condition inspection reports performed. The Tenant testified that at the time arranged for the outgoing inspection, the Landlord already had a contractor doing work in the rental unit.

The Landlord alleges that the unit was not properly cleaned and there were damages done to the rental unit by the Tenant. The Landlord had not filed a claim to keep the security deposit or to recover for the alleged cleaning or damages to the rental unit by the Tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

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 her right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The Landlord 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 I find that the Landlord did not have authority under the Act to keep any portion of the security deposit.

However, I do find the Tenant had insufficient evidence to prove she had sent the Landlord her forwarding address in accordance with the Act, prior to the time of filing her Application. Therefore, I find the Tenant is not entitled to the return of double her 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 **\$400.00**.

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. This 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: November 08, 2010.

Dispute Resolution Officer