



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

This is an application by the Tenant for monetary orders for return of double the security deposit, monetary compensation under the Act, an order for the Landlord to comply with the Act and to recover 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 July 6, 2010, and deemed received under the Act five days later. Despite this the Landlord did not appear at the hearing. I find the Landlord has been served 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 Act by the Landlord?

Has there been a breach of Section 51 of the Act by the Landlord?

Background and Evidence

According to the testimony of the Tenant, this tenancy began in August of 2006. The Tenant paid a security deposit of \$350.00 on August 1, 2006, and at the end of the tenancy the monthly rent was \$700.00.

On March 29, 2010 the Tenant received a two month Notice to End Tenancy from the Landlord indicating the unit was required for the Landlord's use. The effective end date of the tenancy was indicated as May 31, 2010.

The Tenant sent the Landlord a letter by registered mail on April 12, 2010, indicating he was ending the tenancy on April 30, 2010, and he vacated the premises on April 30.

The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to on June 10, 2010, and did not sign over a portion of the security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached sections 38 and 51 of the Act.

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. 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.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

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, plus interest.

I find that the Landlord is not entitled to retain any portion of the security deposit or interest and must return double the security deposit, plus the interest to the Tenant, pursuant to section 38 of the Act.

The Landlord has also breached section 51 of the Act by failing to provide the Tenant the one month of compensation required when a two month Notice to End Tenancy has been given to the Tenant.

Under section 50 of the Act, the Tenant was allowed to end the tenancy early by giving the proper notice to the Landlord, and is still entitled to the compensation of one month of rent. I find the Tenant gave the proper notice and was entitled to end the tenancy early under section 50. Therefore, I find the Landlord owes the Tenant one month of compensation under section 51.

I find that the Tenant has established a total monetary claim of **\$1,461.34** comprised of double the security deposit (2 x \$350.00), plus interest of \$11.34, plus \$700.00 for one month of compensation and the \$50.00 fee paid for this application.

I grant the Tenant an order under section 67 for the balance due of \$1,461.34. 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: November 17, 2010.

Dispute Resolution Officer