



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application for return of double the security deposit. The landlord was represented by an agent. Both parties were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

I determined that the landlord had not served the tenant with all of the same submissions that were made to the Residential Tenancy Branch. The landlord did provide the tenant with photographs of the property; however, damages to the rental unit were not part of this application and I did not consider the photographs.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

A co-tenancy between the landlord and the tenant and her husband commenced October 1, 2009. A security deposit of \$500.00 was paid at the commencement of the tenancy. The female tenant moved out of the rental unit in August 2010. The male tenant moved out October 1, 2010. The landlord refunded \$350.00 of the security deposit to the tenant on October 5 or 6, 2010 along with a letter explaining that amounts had been deducted for cleaning and repairs.

On October 7, 2010 the tenant made this application. During the hearing, the tenant initially stated that she did not provide the landlord with a forwarding address. The tenant claimed her husband gave the landlord a forwarding address. The landlord denied receiving the husband's forwarding address. Then the tenant changed her testimony to say that she gave the landlord's employee a forwarding address in October 2010. The landlord denied receiving a forwarding address in October 2010. The tenant explained that she has cognitive difficulties that impeded her ability fully comprehend the questions asked of her.

The tenant testified that the landlord did not have written consent for deductions from the security deposit. The landlord's agent took the position that in signing the tenancy agreement the tenants agreed to deductions for any damages. The landlord's agent pointed to the tenancy agreement, which is the standard agreement produced by the Residential Tenancy Branch, where it provides that

1) The Landlord agrees:

- c) to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless
 - i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage

The parties agreed that a move-in inspection report was completed by the tenant and given to the landlord. The tenant testified that she was supposed to get a copy of the inspection report from the landlord's employee but that this did not happen. The landlord did not provide evidence to refute this statement.

Analysis

As the parties were informed during the hearing, the landlord's submissions regarding damage to the rental unit were not issues for me to decide in this proceeding as the landlord had not made an Application for Dispute Resolution. The purpose of this hearing was to hear the tenant's application and determine whether the landlord complied with the Act with respect to handling of the security deposit. The landlord remains at liberty to make a separate application for damages within two years of the tenancy ending.

A tenant is entitled to return of double the security deposit if the landlord violates section 38(1) of the Act. Section 38(1) of the Act provides that a landlord must return the security deposit to the tenant or file an Application for Dispute Resolution to retain the security deposit within 15 days of the tenancy ending or receiving the tenant's forwarding address in writing, whichever date is later.

Given the disputed and changing testimony I heard, I find the tenant has not satisfied me that she or her husband gave the landlord a forwarding address in writing. Accordingly, the landlord has not violated section 38(1) and the tenant is not entitled to return of double the security deposit.

I do find the tenant is entitled to return of the \$150.00 the landlord deducted from the security deposit as the landlord did not have the right to make deductions from the security deposit. In order to have the right to make deductions, the landlord must obtain the tenant's consent in writing to make a deduction for a specific amount and the landlord must not have extinguished the right to make deductions. I find that the landlord's right to make any deductions or claims against the security deposit have been extinguished under section 24 of the Act since the landlord failed to inspect the unit with the tenant and give the tenant a copy of the move-in inspection report.

In light of the above findings, I provide the tenant with a Monetary Order in the amount of \$150.00 to serve upon the landlord. The Monetary Order may be enforced in Provincial Court (Small Claims) as necessary.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$150.00 to serve upon the landlord and enforce in 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: March 03, 2011.

Residential Tenancy Branch