



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This is an application by the Tenants for a monetary order for return of double their security deposit, for compensation for two months rent under section 51 of the Act and to recover the filing fee for the claim.

The Tenants appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into the hearing. The Tenants served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on November 5, 2010, and deemed received under section 90 of the Act on November 10, 2010. The Tenants provided in evidence tracking information from Canada Post, which indicates the recipient Landlord refused to accept delivery of the registered mail. I note that refusing or neglecting to accept registered mail is not a ground for review under the Act. I find the Landlord has been duly served in accordance with the Act.

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 Act by the Landlord?

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

Background and Evidence

The Tenants paid a security deposit of \$250.00 in 1989.

On February 27, 2010, the Tenants were served a two month Notice to End Tenancy by an Agent for the Landlord. The Landlord indicated that the reason the tenancy was ending was that the Landlord required vacant possession of the rental unit in order to perform renovations. The Landlord indicated in a letter that extensive renovations,

including the replacement of windows and the roof of the house, had to be done to the rental unit.

The effective date of the two month Notice to End Tenancy was April 30, 2010.

The Tenants vacated the rental unit on April 30, 2010. They testified that they sent the Landlord their forwarding address to return the security deposit on April 29, 2010 by email. On July 11, 2010, the Tenants provided the Landlord with their written notice of their forwarding address by registered mail. The Landlord did not return the security deposit, nor did the Tenants receive a notice that the Landlord was filing an Application to keep the deposit.

The Tenants did not sign over a portion of the security deposit. The testimony of the Tenants was that the Landlord did not perform an outgoing condition inspection report.

About one month after they vacated the rental unit the Tenants spoke to their former neighbours around the rental unit. The neighbours informed them that someone else had moved into the rental unit about one month after the Tenants vacated.

The Tenants testified that the roof and windows at the rental unit had not been changed and that new renters were in the rental unit.

Analysis

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

There was no evidence to show that the Tenants 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 Tenants, to retain a portion of the security deposit, plus interest.

By failing to perform an outgoing condition inspection report the Landlord has extinguished his right to claim against the security deposit, pursuant to sections 24(2) and 36(2) 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.

I find that the Landlord is not entitled to retain any portion of the security deposit or interest. Under section 38 of the Act I must order the Landlord to pay the Tenants double their security deposit.

Under section 51(2) of the Act, if the Landlord does not steps to accomplish the stated purpose for ending the tenancy within a reasonable period of time, the Landlord must pay the Tenants an amount equal to two months rent.

I find the Landlord did not do the renovations which were stated as the purpose for ending the tenancy. I find the Landlord has breached section 51 of the Act and I order the Landlord to pay the Tenants the equivalent of two months rent.

Having made the above findings, I must Order, pursuant to sections 38, 51 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,543.89**, comprised of double the security deposit (\$500.00), the interest on the original amounts held (\$161.89), two months of rent (\$832.00) and the \$50.00 fee for filing this Application.

The Tenants are 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: March 08, 2011.

Residential Tenancy Branch