



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

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

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 Landlords?

Background and Evidence

The Tenant paid a security deposit of \$275.00 on August 20, 2009. The Tenant vacated the premises on September 15, 2010. The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to on September 30, 2010, and did not sign over a portion of the security deposit.

The Landlord who appeared at the hearing testified that the Tenant had left the rental unit dirty and it required eight hours cleaning. The Landlord further testified that the Tenant's pet cats had caused a urine odour in the rental unit. The Landlord testified that they had not applied for Dispute Resolution to keep the security deposit.

Analysis

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

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

The Landlords had not 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, as required by section 38 of the Act.

The Landlords have breached section 38 of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlords. The Landlords may only keep all or a portion of the security deposit through the authority of the Act. Here the Landlords did not have authority under the Act to keep any portion of the security deposit, and therefore, I find that the Landlords are not entitled to retain any portion of the security deposit.

Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenant the sum of \$550.00, comprised of double the security deposit.

The Tenant is given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords 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 14, 2011.

Residential Tenancy Branch