



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was scheduled to deal with the tenant's application for a Monetary Order for return of the security deposit and damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

At the commencement of the hearing, the landlord indicated that he had filed a Landlord's Application for Dispute Resolution to be heard the same time as this application. The landlord was asked to provide a file number, date he filed the application or the date scheduled for the landlord's hearing; however, he could not provide such information. The tenant submitted that she had not been served with a Landlord's Application for Dispute Resolution.

Based upon the submissions before me, I was not satisfied the landlords had filed an Application for Dispute Resolution and I informed the parties that I would proceed to hear the tenant's application only.

Issue(s) to be Decided

Are the tenants entitled to return of the security deposit and should the security deposit be doubled in accordance with section 38 of the Act?

Background and Evidence

The tenancy commenced in June or July 2010 and the tenants paid a \$400.00 security deposit. The landlords did not prepare a move-in inspection report. The tenants vacated the rental unit October 30, 2010 and the parties participated in a move-out inspection together. The landlord did prepare a move-out inspection report dated October 30, 2010 and on that report the tenant's forwarding address appears below the tenant's signature. The tenants did not authorize any deductions from the security

deposit. The tenant requested a copy of the inspection report from the landlords and picked it up from the landlords' residence.

On November 2, 2010 the landlords prepared an "invoice" addressed to the tenants at their forwarding address. The tenant received the invoice in the mail on November 17, 2010. The invoice indicates the landlords are charging the tenants' security deposit \$394.00 for damages and cleaning. The landlords did not refund any portion of the security deposit to the tenants.

The tenant claimed that she provided her forwarding address to the male landlord who wrote the address down on the inspection report that she signed. The male landlord stated that the tenant gave him a piece of paper with her forwarding address which he misplaced and the tenant subsequently provided the female landlord with the forwarding address verbally which the female landlord recorded on the move-out inspection report.

Documentary evidence accepted and considered in making this decision included a copy of the move-out inspection report and the "invoice" prepared by the landlords.

Analysis

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

At the beginning and end of every tenancy the landlord must prepare a condition inspection report. Failure to prepare such reports and provide a copy to the tenant is a violation of the Act and the landlord's right to seek deductions from the security deposit for damages is extinguished. From the evidence before me, I find the landlords' right to retain any portion of the security deposit for damages was extinguished and the landlords did not have the legal right to withhold any amounts from the tenants' security deposit.

Section 38(1) of the Act requires a landlord to either return the security deposit to the tenant or make an Application for Dispute Resolution seeking authorization to retain the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Where a landlord

violates section 38(1) of the Act, the security deposit must be doubled pursuant to section 38(6) of the Act.

I am satisfied the tenant provided a forwarding address to the landlord, in writing, on October 30, 2010 as stated by the landlord, and as evidenced by the move-out inspection report and the landlords' invoice of November 2, 2010 bearing the tenant's forwarding address.

Since the tenant provided her forwarding address in writing to the landlord on October 30, 2010 and the tenancy ended October 30, 2010 the landlords had until November 13, 2010 to refund the security deposit or make an Application for Dispute Resolution to avoid violating section 38(1) of the Act. As I was not satisfied the landlords filed an Application for Dispute Resolution, as previously found in the Introduction, I must order the landlords to pay the tenants double the security deposit pursuant to section 38(6).

In light of the above, the tenants are provided a Monetary Order in the amount of \$800.00 to serve upon the landlords. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court.

If the landlords can provide evidence to substantiate their statements that they had filed an Application for Dispute Resolution they have 15 days upon receipt of this decision to provide the evidence by making a Request for Correction or Clarification of this decision and order.

Conclusion

The tenants have been awarded return of double the security deposit under section 38 of the Act and are provided a Monetary Order for this amount to serve upon the landlords and enforce as necessary.

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: April 26, 2011.

Residential Tenancy Branch