



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenants filed for a monetary order for return of the security deposit and the filing fee for the claim.

The Landlords filed for a monetary order for unpaid rent, for damage to the rental unit, to keep all or part of the security deposit and to recover the filing fee for the Application.

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.

I note that the documentary and photographic evidence of the Landlords was submitted late, and therefore, was not considered in this matter.

Issue(s) to be Decided

Has there been a breach of the Act by the Landlords?

Has there been a breach of the Act by the Tenants?

Background and Evidence

The Tenants paid a security deposit of \$350.00 on August 1, 2010. The Tenants testified they vacated the premises on January 15, 2011. The Tenants testified they provided the Landlords with a written notice of the forwarding address to return the

security deposit to at the end of January 2011, and did not sign over a portion of the security deposit.

The testimony of the Tenants was that the Landlords did not perform either incoming nor outgoing condition inspection reports in accordance with the Act.

In reply, the Landlords testified they did not receive the forwarding address of the Tenants in writing. They also assert the Tenants did not move out until January 16, 2011.

The Landlords claimed the Tenants did not pay rent for January of 2011. The Landlords allege the Tenants left the rental unit dirty and did not clean the rugs.

In reply, the appearing Tenant acknowledged that the January rent had not been paid.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that both the Landlords and the Tenants have breached of the Act.

While the Landlords claim they did not receive the forwarding address of the Tenants in writing, they did receive a copy of the Tenants' Application, and therefore had the forwarding address. Nevertheless, there was no evidence to show that the Landlords had applied for arbitration within 15 days of receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required under section 38 of the Act.

Furthermore, by failing to perform written incoming or outgoing condition inspection reports the Landlords have extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) 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 Tenants by the Landlord. At no time does the Landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

Therefore, I find that the Landlords are not entitled to retain any portion of the security deposit and I must order the Landlords to pay the Tenants the sum of \$700.00 as double the security, pursuant to section 38 of the Act, subject to the set off below.

I also find the Tenants breached the Act by failing to pay rent for the month of January 2011. The Tenants are not allowed to withhold rent, even if the Landlords are in breach of the Act or Tenancy Agreement, unless they have an order allowing them to withhold rent, or if they paid for emergency repairs, pursuant to that portion of the Act. In this case, the Tenants had no authority and were not allowed to withhold rent. Therefore, I order the Tenants to pay the Landlords the sum of \$700.00 for January 2011, rent, subject to the set off below.

Conclusion

Both parties have breached the Act and both parties have been awarded \$700.00 in losses.

Therefore, I order that the amounts payable are set off against each other, pursuant to the Act.

Lastly, I find that since each party breached the Act, I do not award the return of the filing fee for either party.

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: June 06, 2011.

Residential Tenancy Branch