



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for an order to keep the full security deposit of \$1100.00 and a request for recovery of the filing fee.

Decision and reasons

The landlord is requesting an order to keep the full security deposit, however the landlord and the tenant agree that no move in inspection report was ever done at the beginning of this tenancy.

Section 24(2) of the Residential Tenancy Act states:

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Therefore in this case since no move-in report was done the landlords right to claim against the security deposit has been extinguished and the landlord should have returned the security deposit.

Further sections 38(1) & 38(6) of the residential tenancy act state:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord did make an application for dispute resolution however the landlord did not have the right to do so because the landlord's right to claim against the deposit has been extinguished. Therefore the deposit should have been returned within the 15 day time limit and since it was not, it is my decision that the landlord must pay the tenant double the amount of the security deposit.

The tenant paid a deposit of \$1100.00, and therefore the landlord must pay \$2200.00, plus interest of \$38.94.

Conclusion

The landlord's application is dismissed in full without leave to reapply and have issued an order for the landlord to pay \$2238.94 to the tenant.

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: August 29, 2011.

Residential Tenancy Branch