



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution made by the Tenant requesting the return of double the security deposit and the return of one month of rent paid.

Two Tenants were living in the rental unit. One of the Tenants provided a written statement he has assigned his interest in the monetary amounts to the other Tenant, who named only himself on the Application. Both Tenants have a limited facility with English and they provided a translator to assist in the hearing.

The Tenants served the Landlords with the Application and Notice of Hearing by serving the Agent for the Landlords in person on August 6, 2011. The Tenants also served the Notice of Hearing and Application on August 11, 2011, by putting it in a mail slot at the address the Agent for the Landlords gave them. The translator testified he witnessed the service both on August 6 and on August 11. Despite this no one attended for the Landlords. I find the Landlords have been duly served in accordance with the Act.

The translator assisted the Tenants in the hearing.

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

Are the Tenants entitled to the return of double their security deposit?

Are the Tenants entitled to the return of one month of rent?

Background and Evidence

The Tenants moved into the rental unit on or about March 1, 2011. They claim they received no written tenancy agreement from the Landlords and it was a verbal contract. They paid a security deposit of \$420.00 to the Landlords on March 2, 2011. The Tenants explained there was no incoming or outgoing condition inspection reports performed.

On April 30, 2011, the Tenants wrote the Landlords and ended the tenancy due to bed bugs in the rental unit. They provided their forwarding address in writing to the Landlords in the end of tenancy notice. They vacated the rental unit on May 30, 2011.

The shelter allowance of the Tenants was accidentally paid to the Landlords in June of 2011. The Agent for the Landlords told them it would be returned. However, the Tenants explained that the money has not been returned to them.

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 Tenants had agreed, in writing, that the Landlords could retain any portion of the security deposit.

There was also no evidence to show that the Landlords had 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, plus interest. The Landlords have breached section 38 of the Act.

By failing to perform 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 security deposit is held in trust for the Tenants by the Landlords. At no time do 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.

The Landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenants. Here the Landlords did not have any authority under the Act

to keep any portion of the security deposit. Therefore, I find that the Landlords are not entitled to retain any portion of the security deposit and under section 38 they must now pay the Tenants double the security deposit.

I further find the Landlords have kept one month of rent from the Tenants without any right to do so. The Tenants lawfully vacated the rental unit in May and therefore, the Landlords were not entitled to any rent for June. The Landlords must return this to the Tenants.

Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$1,265.00**, comprised of double the security deposit (2 x \$420.00), and one month of rent in the amount of \$425.00.

The Tenants are 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 final and binding on the parties, except as otherwise provided under the Act and 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: September 06, 2011.

Residential Tenancy Branch