



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants appeared at the teleconference hearing and gave affirmed testimony. The Landlord did not appear despite this hearing being scheduled to hear the Landlord's application for dispute resolution.

Issue(s) to be Decided

1. Is the Landlord entitled to retain the Tenants' security deposit?
2. If not, is the Landlord required to return double the amount of the security deposit to the Tenants?

Background and Evidence

The Tenants affirmed that their tenancy began on December 1, 2009 and ended August 15, 2011. Rent was payable on the first of each month in the amount of \$1,400.00 and a week prior to December 1, 2009 they paid the Landlord \$700.00 as the security deposit. Despite the Tenants' requests the Landlord did not complete a move in inspection form and did not complete a move out inspection form.

The Tenants advised that the Landlord was provided their forwarding address in writing on August 15, 2011, August 19, 2011 and September 20, 2011 when registered mail packages were sent to the Landlord on these dates listing their forwarding address. They confirmed the Landlord served them with his hearing documents dated September 12, 2011, at their forwarding address. No evidence was received from the Landlord in support of his application.

There was no evidence or testimony provided in support of the Landlord's claim as no one attended the teleconference hearing on behalf of the Landlord.

Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Landlord, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Landlord called into the hearing during this time. Based on the aforementioned I find that the Landlord has failed to present the merits of his application and the application is hereby dismissed.

Section 24 (2) of the Act provides that 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.

The evidence supports that the Landlord did not complete a move in inspection report and did not complete a move out inspection report. Therefore the Landlord's right to claim against the security deposit was extinguished pursuant to section 24(2) of the Act.

The Landlord has not been successful with his application; therefore he is not entitled to retain the Tenants' security deposit.

This tenancy ended August 15, 2011 and the Landlord was provided the Tenants' forwarding address as early as August 15, 2011, as supported by the evidence provided by the Tenants which included, among other things, copies of registered mail receipts.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenants' security deposit in full or file for dispute

resolution no later than August 30, 2011. The Landlord did not file his application for dispute resolution until September 12, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. Accordingly, I find that the Tenants are entitled to the return of double their security deposit plus interest in the amount of **\$1,400.00** (2 x \$700.00 + \$0.00 interest).

Conclusion

I HEREBY DISMISS the Landlord's application for a Monetary Order, without leave to reapply.

The Tenants' copy of this decision will be accompanied by a Monetary Order in the amount of **\$1,400.00**. This Order is legally binding and must be served upon the Landlord.

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: November 28, 2011.

Residential Tenancy Branch