



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on August 15, 2010 and ended on August 15, 2011. Rent in the amount of \$4,995.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$2,500.00 and a pet deposit in the amount of \$2,500.00. A move-in and move-out inspection was not completed between the Landlord and Tenants and the Tenants provided their forwarding address in writing to the Landlord prior to the end of the tenancy. The Landlord did not return the security deposit to the Tenants and did not file an application for dispute resolution to claim against the security deposit. The Landlord stated that the Tenant authorized the retention of monies and provided a copy of an email, dated June 4, 2011, wherein the Tenant approved the replacement of sheers. The Landlord also provided a copy of the invoice for the replacement of the

sheers in the amount of 2,038.18. The Tenant states that this approval was given but was shocked at the cost.

Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Section 38 further provides that the right of a landlord to retain part of a security deposit at the end of a tenancy, where the tenant agrees in writing that the landlord may retain the amount to pay a liability, does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage has been extinguished under section 24(2).

Based on the undisputed evidence of the Parties, I find that no move-in inspection was conducted or completed and that the Landlord's right to claim against the security deposit has therefore been extinguished. Although the Landlord claims a right to retain an amount from the security deposit based on the authorization of the Tenant through the email, without determining whether the email relied upon is such an authorization, I find that given the extinguishment provisions of the Act, the Landlord cannot rely on such an authorization made after the Landlord's right to claim against the security deposit for damage to the sheers has been extinguished.

As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Tenants are entitled to return of double the security and pet deposit in the amount of \$10,000.00. The Tenants are also entitled to return of the \$100.00 filing fee for a total entitlement of \$10,100.00.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$10,100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 30, 2011.

Residential Tenancy Branch