



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code(s) MNSD

Introduction

This is an Application by the Tenant for a monetary order for return of the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

Background and Evidence

The parties agree that the Tenant paid a security deposit of \$750.00 on March 18, 2011. The parties agree that they have a written tenancy agreement and that the tenancy commenced on April 01, 2011 with a monthly rent of \$1,500.00 due on the first of the month. The parties agree that the Tenant had a pet for a short period of time at the start of the tenancy and paid a pet deposit of \$250.00, which was returned to the Tenant in May 2011. The Tenant is seeking return of her security deposit.

The parties agree that after providing the Landlord one month's notice on July 31, 2011, the Tenant vacated the premises by August 31, 2011. The parties agree that the Tenant paid the August 2011 rent. At the time the Tenant moved out, the Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The parties confirmed that they did not have incoming nor outgoing condition inspection reports.

The Landlord confirmed that he received the Tenant's forwarding address at the time the Tenant moved out. The Landlord states that the tenancy agreement was a fixed term lease from April 01, 2011 to April 01, 2012, and that the Tenant broke the lease. The Landlord states that he tried to find a new Tenant for September 01, 2011 after the Tenant gave notice. He states that he advertised on Craig's list, in the newspaper and by posting ads in local stores. The Landlord states he was not able to obtain a new

Tenant for the rental unit until November 01, 2011. The Landlord states that he has kept the security deposit as the carpet was dirty and he had to clean it, and to offset the rental income he lost for two months when the rental unit was vacant. The Landlord confirmed that he has not applied for dispute resolution in relation to the tenancy and has not received an order under the Act to keep the security deposit.

The Tenant states that the carpets were dirty when she moved into the rental unit. The Tenant states that she left the rental unit cleaner than when she moved into it. The Tenant disagrees with the Landlord's position on the term of the tenancy. The Tenant stated that she gave 30 days notice as required by the Act. The Tenant is requesting that the security deposit be returned to her.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

There was also no evidence to show that the Landlord had applied for dispute resolution, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain all or a portion of the security deposit.

By failing to perform incoming or outgoing condition inspection reports the Landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord 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 Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) of the Act requires that a Landlord pay a Tenant double their security deposit if the Landlord has failed to return the security deposit to the Tenant within 15 days of receiving the Tenant's forwarding address. I find that the Landlord has failed to return the Tenant's security deposit within 15 days of receiving her forwarding address,

and has failed to apply for dispute resolution within 15 days of receiving the Tenant's forwarding address.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of \$1,500.00, comprised of double the security deposit (\$750.00).

The Tenant is given a formal monetary order for **\$1,500.00** and the Landlord must be served with a copy of this order as soon as possible. Should the Landlord 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.

The order is attached to the Tenant's copy of this decision.

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 22, 2011.

Residential Tenancy Branch