



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the Tenants for a monetary order for return of double the security deposit, the interest accrued and to recover the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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

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

Background and Evidence

The Tenants paid a security deposit of \$750.00 on May 26, 2008. The monthly rent was due on the first day of the month.

On June 3, 2011, the Tenants gave the Landlord a Notice to End Tenancy which was to be effective on July 15, 2011. The Notice included a statement from the Tenants that the Landlord could keep the \$750.00 security deposit. The Tenants testified that at that time they believed the Landlord had accepted the tenancy would end on July 15, and the security deposit was to cover the rent for the 15 days in July.

The Tenants testified they then received an email from the Landlord indicating the Tenants were to pay the Landlord all the rent for July, due to the short Notice to End Tenancy. The Landlord did not agree with the Tenants that the tenancy could end on July 15, with only ½ a month of rent paid.

Following this, the Tenants notified the Landlord that they were going to deduct an amount from the July rent payable, to recover an illegal rent increase made by the Landlord. The Landlord admitted during the hearing she did not use the required Notice to increase the rent.

The Landlord filed an Application on or about June 17, 2011, to claim against the security deposit and recover all rent for July. The Tenants paid the Landlord a portion of the July rent and deducted the illegal increase of rent from the balance due.

The Landlord then cancelled the Application and no hearing was held.

The Tenants vacated the rental unit on June 30, 2011.

The Tenants claim they provided the Landlord with a written notice of the forwarding address to return the security deposit to on June 14, 2011. The Landlord denies receiving this due to a mail strike that was occurring at the time.

The Tenants sent two reminders to the Landlord regarding the return of their security deposit.

The Tenants filed this Application for the return of double their security deposit on September 1, 2011.

The Landlord sent the Tenants \$750.00 for their security deposit on or about September 7, 2011. The Tenants informed the Landlord they would hold onto the cheque until this hearing. During the course of the hearing the Landlord testified she had put a stop payment on this cheque due to the Tenants saying they would hold onto the cheque.

Both parties agreed that the Landlord did not perform either incoming or outgoing condition inspection reports.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached section 38 of the Act.

I accept the evidence that although the Tenants had initially agreed in writing that the Landlord could the security deposit, plus interest, this was based on a conversation they had with the Landlord where they wanted to use the deposit to cover ½ of the July rent.

When the Tenants learned that the Landlord was not allowing them to end the tenancy early without paying all the July rent, the Tenants began to request their security deposit be paid back to them. I find it should have been clear to the Landlord at that time that the Tenants were no longer agreeing that the Landlord could keep the security deposit, particularly since the Tenants had paid the Landlord for all July rent due, with their reduction due to the illegal rent increase.

I accept the Landlord had the forwarding address of the Tenants in September, when she mailed them a cheque for the security deposit. However, there was no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, plus interest. I also accept this as clear evidence that the Landlord acknowledged she could not rely on their earlier written notice she could keep the deposit.

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

I find 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 Tenants 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 Tenants. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit and the Landlord had acknowledged the written authority was no longer valid.

Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit or interest, and must pay the Tenants double the security deposit.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,556.76**, comprised of double the

security deposit (2 x \$750.00) the interest on the original amounts held (\$6.76), and the \$50.00 fee for filing this Application.

The Tenants are given a formal Order in the above terms 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.

Lastly, I am enclosing a copy of a guidebook to the Act for the Landlord to assist her to become familiar with the laws that govern her business.

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: November 21, 2011.

Residential Tenancy Branch