



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the Tenants for a monetary order for return of double the security deposit.

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 (the “Act”), by the Landlord?

Background and Evidence

The Tenants paid the Landlord a security deposit of \$550.00 on February 20, 2007.

The Tenants vacated the premises on August 20, 2011. The Tenants provided the Landlord with their forwarding address to return the security deposit to in a previous dispute resolution hearing and did not sign over a portion of the security deposit.

The testimony of the Tenants was that the Landlord did not perform either incoming or outgoing condition inspection reports.

The Agent for the Landlord testified that the Landlord deemed the carpets in the rental unit were left too dirty and smelled of urine when the Tenants moved out. The Agent testified that the Landlord deemed he would deduct \$140.00 for carpet cleaning from the security deposit. The Agent for the Landlord testified he sent the Tenants a cheque

for the balance due of \$424.56 on September 15, 2011. This was after receipt of the Tenants' Notice of Hearing and Application. The Tenant testified he did not cash the cheque.

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.

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

Based on the testimony of the Agent, I find the Landlord had the forwarding address of the Tenants no later than September 15, 2011. There was no evidence to show that the Landlord had made an Application to retain a portion of the security deposit within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants.

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

Furthermore, and In any event, by failing to perform incoming or outgoing condition inspection reports the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

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 **\$1,115.48**, comprised of double the security deposit (2 x \$550.00), and the interest on the original amount held (\$15.48).

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.

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