



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 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.

Preliminary Matter(s)

L.M. the mother of the Tenant was his representative at the hearing. L.M. confirmed that she is not a Tenant on the tenancy agreement and does not live in the rental unit. The Landlord made no objection to L.M. representing the Tenant and was aware that she was the Tenant's mother.

Upon examining the Application it was necessary to clarify which Act applies to the tenancy, as a result I requested the parties to confirm the tenancy details. The parties confirmed that the Tenant was renting a manufactured home from the Landlord. The Landlord states that the parties have a written tenancy agreement pursuant to the *Residential Tenancy Act* and not under the *Manufactured Home Park Tenancy Act*, as the Tenant was not renting a site or pad from him. The Tenant's representative confirmed that this was correct. As a result, I find that it is appropriate to amend the Application to reflect that this dispute is under the *Residential Tenancy Act* and not under the *Manufactured Home Park Tenancy Act*.

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 Tenant was renting a manufactured home from the Landlord. The parties agree that they have a written tenancy agreement and that the tenancy commenced on April 01, 2006 with a monthly rent of \$600.00 due on the first of the month. The parties agree that a security deposit of \$300.00 was paid on April 01, 2006 to the Landlord by the Tenants. The parties agree that there were originally two tenants on the tenancy

agreement, however Tenant AS moved out in June 2009 and Tenant JM remained in the rental unit. Tenant AS has not made an application, it is Tenant JM who has made this application and is seeking return of the security deposit. The parties agree that the tenancy ended on August 31, 2011.

The Landlord confirmed that he received a written forwarding address from the Tenant on September 12 or 14, 2011 with a request for the security deposit. The Landlord states that he did not send the Tenant the security deposit. The Landlord states that the tenancy ended due to a One Month Notice to End Tenancy for Cause he had issued. The Landlord states that he had tried to phone the Tenant twice but thought the Tenant was avoiding him. The Landlord states that he is holding the security deposit due to the condition of the rental unit and an unpaid hydro bill. The Landlord confirmed that no move-out inspection was done with the Tenant present. 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's representative states that the Tenant disagrees with the amount of the hydro bill and the other reasons the Landlord has stated to withhold the security deposit, and states that no move out inspection was done with the Tenant. The Tenant's representative states that the Landlord could have reached the Tenant by phone or in writing at the forwarding address. The Tenant is requesting that the security deposit be returned in accordance with the Act.

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. The Landlord is holding a security deposit of \$300.00 plus interest from April 01, 2006 in relation to this tenancy. The accrued interest to date is \$10.25.

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 in accordance with the Act, 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 \$600.00, comprised of double the security deposit (\$300.00), plus interest in the amount of \$10.25.

The Tenant is given a formal monetary order for **\$610.25** 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: December 05, 2011.

Residential Tenancy Branch