



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 Tenant for a monetary order for return of double the security deposit and the interest accrued.

The Tenant and an Advocate for the Tenant appeared, the Tenant gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified he served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on September 29, 2011. The Landlord is deemed served under the Act five days after the date of mailing. Despite this the Landlord did not appear at the hearing. I find the Landlord has been duly served in accordance with the Act.

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 Tenant paid the Landlord a security deposit of \$195.00 on August 1, 2006. The Tenant vacated the premises on May 31, 2011.

The Tenant testified he provided the Landlord with a written notice of the forwarding address to return the security deposit to before he moved out, and did not sign over a portion of the security deposit.

The Advocate for the Tenant sent another letter to the Landlord dated September 6, 2011, again providing the Landlord with the Tenant's address. Following this, the Landlord sent the Tenant a letter with a bill stating he was not returning the security deposit to the Tenant.

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

Analysis

Based on the above, the uncontradicted 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, plus interest.

I find the Tenant provided the Landlord with his forwarding address in writing in accordance with the Act. Despite this, the Landlord has not returned the security deposit. There was also 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 Tenant, to retain a portion of the security deposit, plus interest.

Regardless, by failing to perform incoming or outgoing condition inspection reports the Landlord extinguished the 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 or from the Tenant 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.

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 **\$396.32**, comprised of double the security deposit (2 x \$195.00) and the interest on the original amount held (\$6.32).

The Tenant is 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 final and binding on the parties, except as otherwise provided for 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: December 07, 2011.

Residential Tenancy Branch