



Dispute Resolution Services

Page: 1

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 paid to the Landlords.

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.

I note the appearing Landlord was interruptive and rude during the hearing and left the hearing before it concluded.

Issue(s) to be Decided

Has there been a breach of section 38 of the *Residential Tenancy Act* (the “Act”) by the Landlords?

Background and Evidence

The Tenant paid the Landlords a security deposit of \$350.00 on July 1, 2009. The Tenant vacated the premises on September 2, 2011. The Tenant submits that the Landlord told her to leave the rental unit. The Tenant submits that one of the Landlords promised to return the entire security deposit to her on the next payday.

On September 12, 2011, the Tenant attempted to personally serve the Landlords with her written notice of the forwarding address to return the security deposit to. The Landlords refused to accept her address. The Tenant sent it by registered mail to the Landlords on September 12, 2011. Under the Act the Landlords are deemed served with the forwarding address five days later, on September 17, 2011.

The Tenant did not sign over a portion of the security deposit to the Landlords.

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

The appearing Landlord testified he did perform written condition inspection reports, however, he did not provide these in evidence.

When I asked the Landlord how long after receiving the forwarding address of the Tenant he had to return it or file a claim against it, he replied, "I don't have a clue."

The Landlord testified he kept the deposit because the Tenant did not pay him half of the rent. He later testified he kept the deposit because she left the rental unit damaged. The Landlords did not submit any evidence to support these claims.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of section 38 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 Landlords 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.

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

The Landlords have breached section 38 of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies.

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

The Landlords 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 Landlords have no authority under the Act to keep any portion of the security deposit. Therefore, I find and order that the Landlords are not entitled to retain any portion of the security deposit and must pay the Tenant double the security deposit.

I am also enclosing a Guidebook to the Act for the Landlords and encourage them to learn their rights and obligations under the Act.

Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenant the sum of **\$700.00**, comprised of double the security deposit (2 x \$350.00).

The Tenant is given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords 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 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: December 20, 2011.

Residential Tenancy Branch