



Dispute Resolution Services

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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 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 Landlords?

Background and Evidence

The Tenant paid the Landlords a security deposit of \$375.00 on September 26, 2010.

The Tenant vacated the premises on March 31, 2011.

The Tenant provided the Landlords with a written notice of the forwarding address to return the security deposit to, in a letter sent by mail to the Landlords on May 25, 2011. The Tenant did not sign over a portion of the security deposit to the Landlords in writing.

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

The Tenant testified that the Landlords kept \$225.00 from the deposit and returned \$150.00 to her. She testified and submitted email evidence that the Landlords charged

her \$175.00 to clean a carpet approximately 64 square feet in size. When she emailed the Landlords and asked for a receipt for the carpet cleaning, the Landlords replied in an email that it would cost another \$25.00 to provide a receipt, because the carpet cleaner had given a “cash discount”. The Landlords explained to the Tenant that, “Nobody provides a receipt when you pay cash.” [Reproduced as written.]

The Landlords testified that they did not do an incoming condition inspection report because the Tenant would not make time to do so. The Landlords did not give the Tenant a written notice of final opportunity to perform an incoming condition inspection report.

The Landlords testified that the Tenant had signed an addendum to the tenancy agreement agreeing that they could keep funds from the security deposit to pay for carpet cleaning and other cleaning. No copy of this addendum was provided in evidence.

The Landlords further testified that the Tenant never paid her rent on time and they did not charge her the interest it cost them on their mortgage. They also testified that the Tenant refused to give them a pet deposit for her cat.

They testified that the Tenant ended the tenancy early, but they allowed her to do this on compassionate grounds.

Analysis

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

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

There was no evidence to show that the Tenant had agreed, in writing, that the Landlords 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.

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. I am enclosing with this decision a copy of a Guidebook to the Act for the use of the Landlords.

As explained to the Landlords during the course of the hearing, 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.

While there may have been an addendum to the tenancy agreement regarding carpet cleaning, the parties are unable to avoid the law by contracting out of the Act, as set out in section 5 of the Act. In other words, the parties here were not able to agree to deductions from the security deposit in the tenancy agreement or an addendum in advance of the end of the tenancy.

The claims of the Landlords that the Tenant was late paying rent or failed to pay a pet damage deposit are not relevant to the issues in the Tenant's Application. If the Landlords had trouble with the Tenant during the tenancy they should have enforced the rights they have under the Act at that time. Furthermore, even if true, these problems do not entitle the Landlords to keep any portion of the security deposit without authority to do so under the Act.

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 with the written agreement of the Tenant. Here the Landlords did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlords are not entitled to retain any portion of the security deposit.

Conclusion

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlords pay the Tenant the sum of **\$650.00**, comprised of double the security deposit (2 x \$375.00) plus the \$50.00 fee for filing this Application; *less the \$150.00 already returned to the Tenant.*

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 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: December 21, 2011.

Residential Tenancy Branch