



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, her agent and the landlord and his agent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on April 27, 2010 for a month to month tenancy beginning on May 1, 2010 for a monthly rent of \$615.00 due on the last day of each month with a security deposit of \$308.50 paid. The tenant clarified in the hearing that she only paid \$307.50 for the security deposit.

The tenancy ended when the tenant vacated the rental unit on September 30, 2011 as a result of a notice to end tenancy issued by the landlord. The tenant originally provided the landlord with her forwarding address in writing in a letter written on October 24, 2011. In addition, the tenant's agent wrote another letter to the landlord on November 9, 2011 requesting the full security deposit and provided her address again.

The tenant asserts that the landlord failed to complete both a move in and a move out condition inspection and that the landlord did return \$145.00 of the security deposit by cheque dated November 8, 2011. The tenant has not cashed this cheque.

The landlord testified that both a move in and move out condition inspection were completed. At first the landlord testified that the reason the move in Condition

Inspection Report was not signed by the tenant is that they had had a flood in the office and all of the records were destroyed but he was able to print off a hard copy from his computer for this hearing.

Later, after the landlord testified that documents are stored in the residential property and scanned to a computer file with the landlord, the landlord testified the tenant had not signed the original move in Report and so even though they printed off a new copy it never did have the tenant's signature.

The landlord also testified that on September 30, 2011 the landlord's agent testified that she spoke with the tenant to advise her they needed to complete a move out inspection but the tenant refused as she had to go to work. The landlord's agent stated she completed the report in the tenant's absence.

The landlord testified that after the inspection the landlord deducted \$87.50 for carpet cleaning and \$75.00 for painting the cupboards. The landlord confirmed that they did not have written agreement from the tenant to retain any amounts and he did not file an Application for Dispute Resolution claiming against the security deposit.

Analysis

Section 23 of the *Act* requires a landlord and tenant to complete a move in inspection. The Section goes on to require the landlord to complete a move in Condition Inspection Report that is to be signed by both parties. Section 23(6) states that the landlord must make the inspection and complete and sign the report without the tenant if the landlord has provided 2 opportunities for the inspection, in accordance with the Residential Tenancy Regulation (Regulation), and the tenant has failed to participate in either opportunity.

Section 35 of the *Act* requires a landlord and tenant to complete a move out inspection. The Section goes on to require the landlord to complete a move out Condition Inspection Report that is to be signed by both parties. Section 35(5) states that the landlord must make the inspection and complete and sign the report without the tenant if the landlord has provided 2 opportunities for the inspection, in accordance with the Residential Tenancy Regulation (Regulation), and the tenant has failed to participate in either opportunity.

Section 17 of the Regulation states the landlord must offer a tenant, for a move in or a move out inspection, a first opportunity but if the tenant cannot attend the landlord must

propose a second opportunity to the tenant by providing the tenant with a notice in the approved form, available on the Residential Tenancy Branch website.

The landlord has provided no evidence of providing the tenant a second opportunity for either the move in or the move out condition inspection. From the landlord's agent's testimony, I find that at least for the move out inspection that the landlord offered only one opportunity and that when the tenant identified she would not attend the landlord completed the inspection but did not provide a second opportunity.

As such, I find the landlord has failed to establish that the landlord has complied with either Sections 23 or 35. Section 24 of the Act states that if a landlord fails to comply with Section 23 they extinguish their right to claim against the security deposit for damage to the rental unit and Section 36 states that if a landlord fails to comply with Section 25 they extinguish their right to claim against the security deposit for damage to the rental unit.

I therefore find the landlord has extinguished his right to claim against the security deposit. And as such, the landlord had no entitlement to retain any amounts from the security deposit.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit less any mutually agreed upon deductions or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the tenant provided the landlord with her forwarding address originally on October 24, 2011 I find the latest the landlord could either return the deposit or file an Application for Dispute Resolution was November 8, 2011.

As the landlord did not have anything in writing from the tenant agreeing to any deductions and since the landlord did not file an Application for Dispute Resolution to claim against the security deposit, I find that be only returning a portion of the deposit of the tenant by November 8, 2011 the landlord has failed to comply with Section 38(1).

As I have the landlord had no authourity to retain any of the security deposit due to his failure to comply with Section 23 and 35 and he has failed to comply with Section 38(1), I find the tenant is entitled to double the amount of the security.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$615.00**.

I note the tenant has not yet cashed the cheque of November 8, 2011 and the landlord testified that the cheque should still be valid. I order the tenant to cash the cheque of November 8, 2011 in the amount of \$145.00 and once the cheque clears it constitutes partial satisfaction of this claim.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: February 15, 2012.

Residential Tenancy Branch