



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 Tenants 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)

At the hearing the Landlord requested to make an application for dispute resolution, as outlined in her Respondent evidence package, which she wished to have heard. I advised the Landlord that she had not applied for dispute resolution in accordance with the Act, and that she must follow proper procedures application procedures.

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 parties agree that the Tenants paid a security deposit of \$550.00 in November 2010. The parties agree that they had a written tenancy agreement and that the tenancy commenced on July 01, 2010 with a monthly rent of \$1,100.00 due on the first of the month. The Tenants moved out of the rental unit on May 31, 2011. The Landlord did not return the security deposit to the Tenants. The parties confirmed that they did not do an outgoing condition inspection report together.

The Tenants stated that they were served with a Two Month Notice from the Landlord on March 27, 2011 giving them three month's to vacate the rental unit as she told them she would be moving into the rental unit for July 01, 2011. The Tenants stated that they advised the Landlord on April 27, 2011 in writing that they would be moving out on May 31, 2011. The Tenants stated that there was no move-out inspection offered to them by the Landlord, and that the Landlord had their cell phone number and could have called them to arrange this. The Tenants stated that the Landlord was not living in the same

town as the Tenants during the tenancy. The Tenants stated that they mostly dealt with the Landlord's sister when they moved out as the Landlord had not move in yet.

The Tenants stated that they delivered their request for the security deposit along with their new address in writing to the rental unit on July 12, 2011, because this was the address the Landlord had told them she would be residing at as of July 2011. The Tenants stated that they did not sign over a portion of the security deposit to the Landlord. The Tenants filed their Application for dispute resolution on November 04, 2011 requesting return of their security deposit in accordance with the Act.

The Landlord stated that she had given Two Month's Notice to the Tenants with an end date that was actually three month's away, as she was moving into the rental unit for July. The Landlord stated that the Tenants gave her one month's notice and moved out. The Landlord stated that the Tenants stated they would be moved out on May 31, 2011, however they left cars at the property which they did not remove until June 14, 2011 when they returned the keys to the rental unit to the Landlord's sister. The Landlord stated that she did not book a move-out inspection with the Tenants due to her health issues and at the end of June she just inspected the rental unit on her own without inviting the Tenants to participate. The Landlord confirmed that she received the Tenants' forwarding address, as her sister had picked up the Tenants' letter from the rental unit address in late July 2011. The Landlord stated that she was residing in the rental unit as of July and working on repairs and renovations that summer which took six weeks. The Landlord stated that the rental unit is currently vacant due to a tax dispute. The Landlord stated that she withheld the Tenants security deposit because they owe her for damages and losses in relation to their tenancy.

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 Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

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 Tenants, to retain all or a portion of the security deposit.

The Landlord testified that she did not contact the Tenants to do an outgoing condition inspection report and that she did this by herself at the end of June 2011. By failing to offer the Tenants opportunities to perform the outgoing condition inspection the Landlord has extinguished their right to claim against the security deposit, pursuant to sections 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 a 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. In the dispute before me, 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 Tenants' security deposit within 15 days of receiving their forwarding address, and has failed to apply for dispute resolution within 15 days of receiving the Tenants' 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 Tenants the sum of \$1,100.00, comprised of double the security deposit (\$550.00).

The Tenants are given a formal monetary order for **\$1,100.00** 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 Tenants' 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: February 07, 2012.

Residential Tenancy Branch