



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 the filing fee.

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.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act, (the "Act"), by the Landlord?

Background and Evidence

The parties agree that the Tenant paid a security deposit of \$1,400.00 in October 2010. The parties agree that they had a written tenancy agreement and that the tenancy commenced on November 01, 2010 with a monthly rent of \$2,800.00 due on the first of the month. The parties agree that the Tenant moved out of the rental unit on October 31, 2011 in accordance with sufficient notice being provided by the Landlord in writing. The Landlord did not return the security deposit to the Tenant. The parties confirmed that they did an informal walk through when the Tenant moved in and moved out of the rental unit.

The Tenant stated that there was no move in inspection report done by the Landlord and that they received no documentation from the Landlord with regards to any condition inspection, that only an informal walkthrough of the rental unit occurred when they were given keys. The Tenant stated that they cleaned the rental unit sufficiently and at the end of the tenancy on October 30, 2011 they did an informal walkthrough of the rental unit with the Landlord. The Tenant stated that the Landlord advised them that they were not satisfied with the cleanliness of the kitchen as the Tenant did not pull out and clean behind appliances. The Tenant stated that the Landlord wrote some notes down but that they did not sign anything with the Landlord and the Landlord has not provided them with a copy of the notes. The Tenant stated that there was no move out condition inspection report completed by the parties. The Tenant stated that that they did not provide the Landlord written permission to keep any of their security deposit and that they provided the Landlord their written forwarding address on October 30, 2011 to

send the security deposit to. The Tenant stated that more than a month after their tenancy ended the Landlord forwarded them \$602.00 from the security deposit and withheld \$798.00 without their consent.

The Tenants filed their Application for dispute resolution on December 29, 2011 requesting return of double the balance of their security deposit, plus the filing fee for the application.

The Landlord stated that they were not satisfied with the cleanliness of the rental unit at the end of the tenancy and had to have the interior, yards and garage cleaned at a cost of \$798.00. The Landlord confirmed that a formal move out inspection report was not done and that no documentation of the final walkthrough was provided to the Tenant. The Landlord confirmed that they received the forwarding address from the Tenant on October 30, 2011. The Landlord stated that they deducted the \$798.00 from the security deposit and sent the Tenant the balance of the deposit which amounted to \$602.00. The Landlord's written submission indicates that the \$602.00 was sent to the Tenant along with a letter dated November 30, 2011 informing the Tenant of the deduction for \$798.00 for the cleaning. The Landlord stated that they did not file an application for dispute resolution.

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 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 Landlord had applied for dispute resolution of the cleaning costs. The parties agree that they did not document an incoming or outgoing condition inspection report together, as required by the Act.

By failing to perform an incoming and outgoing condition inspection report with the Tenant the Landlord has extinguished their right to claim against the security deposit, pursuant to sections 24 and 36 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.

Although the Tenant only claimed double the balance of their security deposit, I find that their calculation of \$1,596.00 (\$798.00 x 2) is incorrect. The Tenant is entitled to double the full amount of the security deposit (\$1,400.00 x 2), less the \$602.00 received on or after November 30, 2011 from the Landlord. 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 Tenant's security deposit within 15 days of receiving their forwarding address, and has failed to apply for dispute resolution.

The Tenant paid a security deposit of \$1,400.00, as a result double this amount is \$2,800.00. The Tenant received \$602.00 from the Landlord more than one month after the tenancy ended. The amount owing to the Tenant is \$2,800.00 – \$602.00 = \$2,198.00.

As the Tenant has succeeded in their application, they are also entitled to the \$50.00 filing fee paid.

Pursuant to section 67 of the Act, I grant the Tenant a monetary order for **\$2,248.00**.

Conclusion

Having made the above findings, I must order, pursuant to section 67 of the Act, that the Landlord pay the Tenant the sum of \$2,248.00, comprised of double the security deposit, less \$602.00 paid by the Landlord, and the filing fee.

The Tenant is given a formal monetary order for **\$2,248.00** and the Landlord must be served with a copy of this order. 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 Tenant's 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: March 08, 2012.

Residential Tenancy Branch