



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 under the Residential Tenancy Act, (the "Act"), 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 Act by the Landlord?

Background and Evidence

The parties agree that the Tenant paid a security deposit of \$425.00 in September 2010. The parties agree that the tenancy commenced September, 2010 with a monthly rent of \$850.00. The parties did not provide a copy of the tenancy agreement into evidence. The Tenant moved out of the rental unit on September 30, 2011. The Landlord returned only \$350.00 of the security deposit to the Tenant and withheld the rest. The parties confirmed that they did not do an outgoing condition inspection report together at move out.

The Tenant stated that the Landlord visited the rental unit before he had vacated to see that he had cleaned it, but she did not schedule a move out inspection. The Tenant stated that the Landlord told him to leave the keys in the mail box as she did not have time to meet him to do the move out inspection when the rental unit was empty. The Tenant stated that he requested his security deposit and provided the Landlord with his forwarding address in writing when the tenancy ended. The Tenant stated that the Landlord mailed \$325.00 from the security deposit to him but withheld \$100.00. The Tenant filed his Application for dispute resolution on November 25, 2011.

The Landlord stated that the Tenant was slow to move out and finished his move out in the evening rather than in the afternoon. The Landlord stated that their new tenant stayed a night in a hotel as a result. The Landlord stated that they did not do a move out inspection with the Tenant. The Landlord stated that the Tenant was required to keep the hardwood floors in the rental unit in good condition but that they were not

satisfied with the condition when the Tenant moved out as there were some scratches on the flooring and they had to re-varnish the floor, as a result they charged the Tenant \$80.00 from his security deposit. The Landlord stated that the Tenant also did not glue some broken window tile and they had to do this as a result they charged the Tenant \$20.00 from his security deposit for this. The Landlord stated that they have not filed an application for dispute resolution. The Landlord stated that the move-in condition inspection report they signed with the Tenant allows them to deduct \$80.00 for floor varnish at the end of the tenancy, but that this is not in the tenancy agreement. The Landlord provided a copy of the move in condition inspection report into evidence.

The Tenant stated that he did not provide any written consent to the Landlord to make any deduction from his security deposit either at move in or at move out. The Tenant stated that the Landlord never explained any fees or instructions for varnishing to him when he commenced the tenancy, and it was only after he gave his notice to move out that the Landlord advised him that she was planning to charge him for floor varnishing. The Tenant stated that he left the rental unit in good condition and was not aware of any broken tile or any scratches in the floor. The Tenant is requesting return of the rest of his security deposit and the filing fee.

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.

I find that the Landlord's evidence of the move-in condition inspection report does not provide them authorization to withhold \$80.00 for floor varnish at the end of the tenancy. The move in condition inspection report is not clear that the Tenant authorized this expenditure, the words floor varnish are mentioned nowhere on this form, and the expenditure is in the move-out condition column and not the move in condition column on the form. A move-out condition inspection did not occur. There is insufficient evidence 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, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain all or a portion of the security deposit.

The Landlord testified that she did not schedule an outgoing condition inspection report with the Tenant. By failing to offer the Tenant 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.

Although the Tenant only claimed double the balance of their security deposit, I find that their calculation of \$200.00 (\$100.00 x 2) is incorrect. The Tenant is entitled to double the full amount of the security deposit (\$425.00 x 2), less the \$325.00 received on or after October 09, 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 \$425.00, as a result double this amount is \$850.00. The Tenant received \$325.00 from the Landlord after the tenancy ended. The amount owing to the Tenant is $\$850.00 - \$325.00 = \$525.00$.

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 **\$575.00**.

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 \$575.00, comprised of double the security deposit, less \$325.00 paid by the Landlord, and the filing fee.

The Tenant is given a formal monetary order for **\$575.00** 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 12, 2012.

Residential Tenancy Branch