



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 under the Residential Tenancy Act, (the "Act"), by the Tenant 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.

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 \$625.00 on February 08, 2012. The parties agree that the Tenant had agreed to rent the rental unit for \$1,250.00 per month. The parties did not do an incoming or outgoing condition inspection report as the Tenant never moved in.

The Tenant stated that on February 08, 2012 he met with the Landlord and paid the security deposit as an intent to rent, but that the tenancy never commenced as he was not allowed to move in until he provided the Landlord the rent. The Tenant stated that he did not complete a tenancy agreement with the Landlord. The Tenant stated on February 08, 2012 that he and the Landlord filled out a Ministry of Social Development shelter form so that he could apply to the Ministry to obtain rent for the Landlord so that the tenancy could commence. The Tenant stated that he went to the Ministry more than once to try and get assistance and eventually he was able to get the rent money. The Tenant stated that by the time he obtained the rent money later in February 2012, the Landlord said it was too late and that he had already rented to someone else. The Tenant stated that he had to find somewhere else to live.

The Landlord stated that he received \$625.00 from the Tenant for the security deposit on February 08, 2012 and that the Tenant had agreed to pay the rent by February 10, 2012. The Landlord confirmed that on February 08, 2012 he filled out the shelter form with the Tenant so that the Tenant could apply to the Ministry of Social Development for his rent. The Landlord stated that the Tenant signed a tenancy agreement with him on February 08, 2012 for a one year fixed term and that the tenancy was to commence

February 08, 2012. The Landlord did not provide a copy of the tenancy agreement into evidence. The Landlord stated that he did not provide keys to the Tenant and did not allow him to move in and was waiting for the rent to be paid by February 10, 2012 as they had verbally agreed. The Landlord stated that the Tenant did not pay rent. The Landlord stated that the Tenant's brother is also a tenant of his at another residential property and that he discovered that the Tenant was still living with his brother. The Landlord stated that he did not have a phone number for the Tenant so he asked the Tenant's brother to pass him a message to call the Landlord about whether he would be paying the rent. The Landlord stated that when the Tenant failed to pay rent, he found new tenants for the rental unit. The Landlord stated that he received no rental income for February 2012 and that his new tenants paid rent effective March 01, 2012. The Landlord stated that he received the Tenant's written forwarding address and application for dispute resolution with request for return of the security deposit by registered mail on March 05, 2012. The Landlord stated that he had rental income loss due to the Tenant's breach of the tenancy agreement and that he wants to keep the security deposit. The Landlord stated that he has not made an application for dispute resolution or received written consent from the Tenant to keep the security deposit.

The Tenant confirmed that he sent the application for dispute resolution and hearing notice package by registered mail to the Landlord on February 29, 2012 with his address for return of his security deposit. The Tenant provided the registered mail tracking number into evidence, which confirmed that the Landlord signed for and received the documents and application for dispute resolution which included the Tenant's written forwarding address on March 05, 2012.

The Tenant requests a monetary order for the return of his security deposit.

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 Tenant never moved into the rental unit and was never provided the keys by the Landlord, as a result a move-in and move-out condition inspection did not occur. I also find that the Tenant did not agree in writing, that the Landlord could retain any portion of the security deposit and the Landlord has not applied for dispute resolution to retain all or a portion of the security deposit.

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.

Section 38 of the Act requires that a landlord return the security deposit to the tenant within 15 days of receiving the tenant's forwarding address. The Landlord and the registered mail tracking number provided by the Tenant confirm that Landlord received the Tenant's written forwarding address by registered mail on March 05, 2012. The Tenant is entitled to return of the security deposit in the amount \$625.00 and I order the Landlord to return the deposit to the Tenant on or before March 20, 2012. Pursuant to section 67 of the Act, I grant the Tenant a monetary order for **\$625.00**.

If the Landlord fails to return the security deposit to the Tenant on or before March 20, 2012 the Tenant may apply for double the amount of the security deposit as stated in the Act.

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 \$625.00 representing the security deposit.

The Tenant is given a formal monetary order for **\$625.00**. 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 14, 2012.

Residential Tenancy Branch