



Dispute Resolution Services

Page: 1

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 recovery of 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 \$1,250.00 on January 13, 2012. The parties agree that they had a written tenancy agreement which stated that the Tenant was renting the rental unit for a fixed term February 01, 2012 to January 31, 2013, for a monthly rent of \$2,500.00 due on the first of each month. The Tenant provided a copy of the tenancy agreement into evidence. The parties agree that the Landlord had provided the Tenant the keys to the rental unit on January 23, 2012 and that the Tenant could move in early if he wished to do so. The Tenant decided not to move into the rental unit and notified the Landlord. The Landlord did not return the security deposit to the Tenant. The parties confirmed that they did not do an incoming or outgoing condition inspection report together.

The Tenant testified that the rental unit should have been cleaned by the Landlord prior to providing the keys. The Tenant provided photographs into evidence of the condition of the rental unit. The Tenant stated that the rental unit was dirty, repairs had not been done by the Landlord, carpet cleaning was not done, painting was not done, the rental unit smelled of smoke, and the keys provided by the Landlord did not fit all of the doors. The Tenant stated that he told the Landlord on January 23, 2012 that he felt the rental unit was not fit for occupancy, and that he would not be moving into the rental unit. The

Tenant stated that he delivered a letter stating he would not be moving into the rental unit and listed the reasons why and requested return of the security deposit and provided his forwarding address in writing to the Landlord on January 25, 2012 along with the keys. The Tenant provided into evidence a copy of this letter which contains the written forwarding address which is dated January 24, 2012. The Tenant stated that he did not sign over a portion of the security deposit to the Landlord. The Tenant stated that the Landlord obtained a new tenant for the rental unit right away and that the new tenant moved in on February 13, 2012, and that the new tenant told him he was not happy with the condition of the rental unit either. The Tenant stated that the Landlord did not return the security deposit within 15 days of receiving the Tenant's forwarding address. As a result, the Tenant filed an Application for dispute resolution on February 10, 2012.

The Landlord confirmed receipt of the Tenant's application, evidence and hearing notice by registered mail dated February 10, 2012. The Landlord testified that they withheld the Tenant's security deposit because the Tenant did not move into the rental unit or pay rent pursuant to the Act and the tenancy agreement which the Tenant signed. The Landlord stated that the Tenant owes them rental income loss for one and a half month's for the period February 01, 2012 to March 14, 2012, as they were not able to obtain a new tenant for the rental unit until March 15, 2012. The Landlord stated that they have not applied for dispute resolution at this time. The Landlord stated that the Tenant paid them the security deposit and signed the tenancy agreement on January 13, 2012. The Landlord stated that they allowed the Tenant to move in one week early on January 23, 2012 and that the Tenant verbally agreed to accept the rental unit "as is" when he entered into the tenancy agreement. The Landlord stated that the rental unit was clean enough and that the only thing outstanding was for them to put in a washer and dryer. The Landlord stated that the Tenant returned the keys to them on January 25, 2012 but they do not remember receiving anything in writing. The Landlord stated that it was on February 8 or 9, 2012 that the Tenant informed them that he was not moving into the house and wanted his security deposit returned. The Landlord stated that they found a new tenant, but the new tenancy was effective March 15, 2012.

The Tenant is requesting return of his security deposit in accordance with the Act and recovery of the filing fee for the application.

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.

While the Landlord disputes receiving the Tenant's forwarding address on January 25, 2012, he does not dispute receiving the Tenant's evidence, application and notice of hearing of February 10, 2012 by registered mail. The Act deems registered mail as served within five days of being sent. As the hearing was held on April 13, 2012, I find that the Landlord had the Tenant's written forwarding address since February 15, 2012 if not sooner, and failed to return the security deposit to the Tenant within 15 days. 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 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. As a result, I order the Landlord to pay the Tenant \$2,500.00 which represents double the amount of the security deposit (\$1,250.00 x 2).

As the Tenant has succeeded in his Application, I find he is entitled to recover the \$50.00 filing fee for this Application. As a result, the Tenant is entitled to a monetary order against the Landlord in the total amount of \$2,550.00.

Conclusion

Having made the above findings, I must order, pursuant to section 38, 67, and 72 of the Act, that the Landlord pay the Tenant the sum of \$2,550.00, comprised of double the security deposit (\$1,250.00) and the filing fee for this application (\$50.00).

The Tenant is granted a formal monetary order for **\$2,550.00** 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 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: April 17, 2012.

Residential Tenancy Branch