



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant only.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 23, 24, 35, 36, 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

While the landlord did not attend the hearing the tenant testified that the landlord did not complete a move in inspection. This statement is also noted in the tenant's written submission that she provided into evidence. I also note that despite the provision of evidence from the landlord there was no move in or move out Condition Inspection Report submitted by the landlord as evidence for this proceeding.

Analysis

Section 23 of the *Act* requires a landlord to complete a move in condition inspection with the tenant on the day the tenant is entitled to possession or on another mutually agreed upon day and the landlord must provide a copy of the report from the inspection. Section 24 states that if the landlord fails to comply with this he extinguishes his right to claim against the security deposit for damage to the unit. From the tenant's testimony I find the landlord has extinguished his right to claim for compensation for damage to the unit.

Residential Tenancy Policy Guideline #17 states that "the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions under the *Act*, on a landlord's application to retain all or part of the security deposit unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, whether or not the tenant has applied for arbitration for its return."

As such, as the landlord has failed to establish his claim in this hearing by failing to attend the hearing I dismiss the landlord's Application in its entirety without leave to reapply.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As I have dismissed the landlord's claim I find the tenant is entitled to return of the security deposit. As I have found the landlord has extinguished his right claim against the security deposit, I find the landlord had no ability under the Act to retain the security deposit while he filed an Application to claim against the tenant for damage to the rental unit but that in accordance with Section 38(1) he was required to return the security deposit with 15 days of the end of the tenancy and received of the tenant's forwarding address.

As the landlord first filed his Application against the tenant to retain the security deposit on December 5, 2011 I accept the landlord had the tenant's forwarding address at that time and was required to return the deposit no later than December 20, 2011. Therefore I find the tenant is entitled to double the amount of the security deposit in accordance with Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,350.00** comprised of double the amount of the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 24, 2012.

Residential Tenancy Branch