



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 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 present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the landlord?

Background and Evidence

The tenant paid a security deposit of \$375.00 in October 2010. The tenant vacated the premises on January 31, 2012. The tenant provided the landlord written consent to keep \$290.00 from the security deposit for unpaid utilities, however, the actual amount was \$229.10. The tenant provided the landlord with written notice of his forwarding address. Filed in evidence is a copy of the utility invoice.

The testimonies of the parties were that neither incoming nor outgoing condition inspection reports were completed in writing.

The landlord testified that he received the tenants forwarding address on February 10, 2012. The landlord stated he has not made an application for dispute resolution to retain the balance of the security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord has breached the Act.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant.

By failing to perform incoming or outgoing condition inspection reports the landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 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 the 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. Here the landlord only had the authority under the Act to keep a portion of the security deposit for unpaid utilities, the balance of the security deposit the landlord was not entitled to retain.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

I must order, pursuant to section 38 and 67 of the Act, that the landlord pays the tenant the sum of **\$291.18**, comprised of double the balance of the security deposit the landlord was not entitled to retain.(\$145.90).

Conclusion

The tenant is given a formal Order in the above terms 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.

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 27, 2012.

Residential Tenancy Branch