



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 double the security deposit and the return of rent money paid. The Advocate for the Tenant withdrew the claim for rent during the course of the hearing.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has there been a breach of section 38 of the *Residential Tenancy Act* (the "Act"), by the Landlord?

Background and Evidence

The Tenant paid a security deposit of \$757.50 to the Landlord on July 1, 2010. The Tenant vacated the premises on December 16, 2011.

The Tenant's evidence is an Agent for the Tenant provided the Landlord with a notice of the forwarding address to return the security deposit to on or about December 16, 2011, and did not sign over a portion of the security deposit at that time. The Tenant's evidence was that the Agent dictated the address to the Landlord and the Landlord wrote this on a piece of paper.

During the course of the hearing the Tenant agreed that the Landlord may withhold \$80.00 of the security deposit for cleaning.

The testimony of the Tenant was that the Landlord did not perform either incoming or outgoing condition inspection reports, in accordance with the Act.

The Landlord testified that she never received the Tenant's forwarding address in writing, nor was it dictated to her.

The Landlord testified she sent the Tenant a cheque for the balance of the security deposit after she had made deductions for certain items. She testified that she sent the balance to the Tenant's parent's address, as she had that address from a transaction unrelated to the tenancy. The Landlord sent the cheque on or about January 9, 2012, to the Tenant's parents' address.

The cheque the Landlord had returned to the Tenant was for \$310.10 and the Tenant has cashed that cheque.

The Landlord agreed she had received a copy of the Tenant's Application for Dispute Resolution, but the Landlord could not recall the date she received the Application.

The Landlord's evidence indicates she had received the Application and Notice of Hearing before March 14, 2012, as the Landlord wrote to the Branch in regard to the scheduled hearing.

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 no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. The Tenant agreed during the hearing that the Landlord could retain \$80.00 for cleaning of the rental unit.

I find that the tenancy ended on December 31, 2011. I find the Landlord had the forwarding address of the Tenant on or about January 9, 2012, and sent a cheque to this address. In the alternative, and in any event, the Landlord had the forwarding address in writing no later than March 14, 2012, as it was written on the Tenant's Application which the Landlord had received.

The Landlord had not applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit.

By failing to perform incoming or outgoing condition inspection reports the Landlord extinguished her 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 with the written agreement of the Tenant at the end of the tenancy. Here 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, except the \$80.00 agreed to by the Tenant during the hearing.

Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,124.90**, comprised of double the security deposit (2 x \$757.50), **less** \$310.10 already returned and the \$80.00 agreed to during the hearing.

I note no interest is payable on the deposit, as it was collected in 2010.

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 final and binding on the parties, except as otherwise provided under the Act, and 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: May 07, 2012.

Residential Tenancy Branch