



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O

Introduction

This hearing dealt with an application by the Tenants for a monetary order for return of the security and pet damage deposits. The Tenants did not request a doubling of the deposits, only for the return of the deposits less an amount agreed to for carpet cleaning.

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 parties entered into a fixed term, one year written tenancy agreement which began on March 1, 2011. The Tenants paid a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00 on or about January 18, 2011, and the monthly rent was agreed upon at \$2,400.00

The Tenants testified they vacated the premises on March 28, 2012. The Landlord claims the Tenants vacated the rental unit on March 29, 2012.

The Tenants testified they served the Landlord with their forwarding address in writing on March 19, 2012. The Tenants testified they did not sign over a portion of the security deposit to the Landlord.

Both parties agreed that there was an incoming condition inspection report performed.

The parties dispute the circumstances around the outgoing condition inspection report. The Landlord alleges the Tenants failed to sign the move out condition inspection report. The Tenants allege the Landlord did not give them two opportunities for the outgoing condition inspection report.

The Landlord alleges the Tenants agreed in the lease that she could keep the security deposit for cleaning and making repairs to the rental unit. The Landlord deducted funds from the deposits of \$2,400.00 and returned a balance of \$1,465.00 to the Tenants. The Tenants did not cash this cheque and returned it to the Landlord.

The Tenants had provided the Landlord with a cheque for carpet cleaning at the end of the tenancy. However, an Agent for the Landlord did not attend the rental unit to allow the carpet cleaners in. This cheque was returned to the Tenants. Nevertheless, the Tenants agreed during the hearing that the Landlord may keep \$178.08 from the security deposit for the cost of cleaning the carpets at the rental unit.

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 Tenants had agreed, in writing, that the Landlords could retain any portion of the deposits that satisfied the requirements of the Act and the regulations. I find that the portion of the lease the Landlord refers to, clause 8, is not valid and an attempt to contract outside of the Act and regulations since it does not deal with the security deposit in accordance with the Act. Section 5 of the Act prohibits the parties from avoiding or contracting outside of the Act or the regulations.

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 Tenants, to retain a portion of the security deposit or pet damage deposit.

I also find the Landlord failed to perform the outgoing condition inspection report in accordance with the Act. The Landlord was required to provide the Tenants a second opportunity, in writing, for the condition inspection report. Furthermore, the Landlord was required to complete the condition inspection report even if the Tenants did not attend. By failing to perform the outgoing condition inspection report in accordance with

the Act, the Landlord extinguished their right to claim against the deposits, 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 and pet damage deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act. Here I find that the Landlord did not have authority under the Act to keep any portion of the deposits.

Conclusion

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$2,271.92**, comprised of the deposits in the amount of \$2,400.00 and the filing fee for the Application of \$50.00, less the agreed amount for carpets of \$178.08.

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. This 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: June 26, 2012.

Residential Tenancy Branch