



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties

The Landlord applied to keep the security deposit and recover the filing fee for the Application.

The Tenant applied for a monetary order for return of the security and pet damage deposits paid to the Landlord and for the return of the filing fee for the Application.

Only the Tenant appeared at the hearing. The Tenant provided affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord received the Notice of Hearing when they filed their Application for Dispute Resolution. Despite this the Landlord did not appear at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Matter

This matter was set for hearing by telephone conference call at 11:00 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Respondent Tenant. Therefore, as the Applicant Landlord did not attend the hearing by 11:10, and the Respondent Tenant appeared and proceeded with their Application, I dismiss the Landlord's claims without leave to reapply.

Issue(s) to be Decided

Has there been a breach of section 38 of the Act by the Landlord?

Background and Evidence

The Tenant paid the Landlord a security deposit of \$400.00 and a pet damage deposit of \$400.00 on or about December 12, 2011.

The Tenant vacated the premises on April 26, 2012. The Tenant testified she provided the Landlord with a written notice of the forwarding address to return the security deposit to, by giving it in a letter to the Landlord on April 26, 2012. The Tenant provided a copy of the letter in evidence.

The Tenant testified she did not sign over a portion of the security deposit to the Landlord.

The Tenant testified that the Landlord performed an incoming condition inspection report although no outgoing condition inspection report was done.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find and order that the Landlord must return the security and pet damage deposits to the Tenant.

While the Landlord had applied for arbitration to keep the deposits, the Landlord did not appear at the hearing of the Application and it was dismissed without leave.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

Furthermore, by failing to perform the outgoing condition inspection report in accordance with the Act, the Landlord extinguished the right to claim against the security or pet damage deposits for damages, pursuant to sections 24(2) and 36(2) of the Act.

Therefore, I find 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.

These deposits are held in trust for the Tenant by the Landlord.

The Landlord may only keep all or a portion of the security or pet damage deposits 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 did not have authority under the Act to keep any portion of the deposits. Therefore, I find that the Landlord is not entitled to retain any portion of the security or pet damage deposits and must return these to the Tenant.

Conclusion

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$850.00**, comprised of the \$400.00 security deposit, the \$400.00 pet damage deposit and the \$50.00 fee for filing this Application.

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.

The Landlord failed to appear for the hearing of their Application and it is dismissed without leave to reapply.

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: July 03, 2012.

Residential Tenancy Branch