



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application by the Tenant for a monetary order for return of double the security deposit paid to the Landlords and for the return of the filing fee for the Application.

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

The Tenant testified and supplied documentary evidence that she served the Landlords with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on June 4, 2012. Under the Act registered mail is deemed received five days after being sent. I note that neglect or refusal to accept registered mail is not a ground for review under the Act. I find the Landlords have been duly served in accordance with the Act.

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.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlords?

Background and Evidence

The Tenant paid the Landlords a security deposit of \$250.00 on April 9, 2012. The Tenant vacated the premises on May 6, 2012.

The Tenant provided the Landlords with a written notice of the forwarding address to return the security deposit to, by sending it registered mail to the Landlords on May 6, 2012. In evidence the Tenant provided a copy of the registered mail receipt.

The Tenant did not sign over a portion of the security deposit.

The Tenant testified that the Landlords did not perform an incoming or outgoing condition inspection report.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of the Act.

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

There was also no evidence to show that the Landlords had 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, as required under section 38 of the Act.

By failing to perform the incoming condition inspection report in accordance with the Act, the Landlords extinguished the right to claim against the security deposit for damages at the outset of the tenancy, pursuant to sections 24(2) of the Act.

Therefore, I find the Landlords have breached section 38 of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlords. At no time do the Landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlords 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. Here the Landlords did not have any such authority to keep any portion of the security deposit. Therefore, I find that the Landlords are not entitled to retain any portion of the security deposit, and under section 38 I must order the Landlords to pay the Tenant double the security deposit.

Conclusion

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlords pay the Tenant the sum of **\$550.00**, comprised of double the security deposit (2 x \$250.00) and the \$50.00 fee for filing this Application.

The Tenant is granted a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords 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: August 09, 2012.

Residential Tenancy Branch