



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a monetary award from the landlord equivalent to double the value of his security deposit for this tenancy. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to ask questions of one another. The landlords were accompanied by a friend who translated the proceedings to them.

Although this tenancy ended on April 30, 2012, the parties disagreed as to who prompted the end to this tenancy. The tenant testified that the landlords asked him to leave by that date and did not issue him a written notice to end his tenancy. The landlords testified that the tenant told them that he was planning to end his tenancy by the end of April 2012. The landlords said that they signed a document confirming the end of this tenancy but gave it to the tenant. Neither party submitted into written evidence a copy of any written notice to end this tenancy.

The landlords confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on June 23, 2012. I am satisfied that the tenant served this package to the landlords in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

This tenancy commenced on December 1, 2011. Monthly rent was set at \$650.00, payable in advance on the first of each month. The parties agreed that the landlords continue to hold the tenant's \$300.00 security deposit paid on November 25, 2011.

The tenant vacated the rental unit by April 30, 2012. The landlords testified that they did not know when the tenant left the rental unit as he did not return his key(s) to them.

They said that they did not enter the rental unit until May 6, 2012, as the tenant had threatened to call the police if they tried to enter his rental unit without his permission.

The tenant submitted a copy of the May 11, 2012 registered letter he sent to the landlords requesting a return of his security deposit to his current mailing address. The landlords confirmed receiving this registered letter and confirmed that they had the tenant's forwarding address after they received that letter.

The tenant applied for a monetary award of \$600.00 because he claimed that the landlords had failed to return his security deposit in full within 15 days of their receipt of his forwarding address in writing.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the landlords admitted that they neither applied for dispute resolution for authorization to retain the security deposit nor did they return any portion of his security deposit. In their sworn oral testimony, they noted that the tenant had signed an agreement at the beginning of his tenancy that would allow the landlords to keep his security deposit if he did not leave the premises in satisfactory condition. The landlords did not dispute the tenant's claim that no joint move-in or move-out condition inspection was conducted, nor was any condition inspection report completed and provided to the tenant. However, they claimed that the premises were not left in reasonably clean or undamaged condition at the end of this tenancy. The landlords provided no written or photographic evidence for this hearing.

As noted above, the only type of mutual agreement that would enable the landlords to retain the tenant's security deposit would be one that was signed by the tenant "at the end of the tenancy." I find that the agreement referred to in the landlords' oral testimony

was not signed at the end of the tenancy and was in no way an agreement to retain his security deposit.

I find that the landlords' retention of the tenant's security deposit contravenes section 38 of the *Act*. I find that the tenant is entitled to a monetary award of \$600.00. This monetary award returns the tenant's \$300.00 security deposit plus applicable interest and imposes an equivalent \$300.00 monetary award due to the landlord's failure to comply with section 38 of the *Act*. No interest is payable over this period.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$600.00 for the landlord's failure to return the tenant's security deposit to the tenant within the time frame established in the *Act*.

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: August 30, 2012

Residential Tenancy Branch