



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O

Introduction

This is an application by the Tenant for a monetary order for return of double the security deposit and pet damage deposit, and to recover the filing fee for the Application.

Only the Tenant and an advocate assisting her appeared at the hearing. They gave 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 provided documentary evidence that she had served the Landlord with the Notice of Hearing and the Application by registered mail, sent on July 4, 2012. Under the Act registered mail is deemed served five days after mailing. The Tenant provided evidence that this registered mail went unclaimed by the Landlord. I note that refusal or neglect to accept registered mail is not a ground for review under the Act. I find the Landlord has been duly served in accordance with the Act.

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 Act by the Landlord?

Background and Evidence

On March 6, 2009, the Tenant paid the Landlord a security deposit of \$675.00. On March 31, 2009, the Tenant paid the Landlord a pet damage deposit of \$675.00. The Tenant provided copies of these cheques in evidence.

The Tenant testified she vacated the rental unit on March 31, 2012.

The Tenant testified she served the Landlord with her forwarding address to send the deposits to by sending it registered mail on June 6, 2012. The Tenant provided evidence that the Landlord signed for this mail, acknowledging receipt of it. I note this was the same address where the Tenant sent the Notice of Hearing.

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

The Tenant further testified that no incoming or outgoing condition inspection reports were performed.

The Landlord had made an Application for Dispute Resolution to keep the deposits and alleged there were damages done to the rental unit by the Tenant. The hearing for this occurred on June 5, 2012, however, the Landlord did not appear at the hearing. Since only the Tenant attended this hearing the Landlord's claims were dismissed without leave to reapply.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached section 38 of 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 or pet deposits.

The Landlord did not appear at the hearing for their own Application to keep the deposits.

By failing to perform incoming or outgoing condition inspection reports the Landlord extinguished their 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. 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 security deposit.

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 **\$2,750.00**, comprised of double the security deposit and pet damage deposit (2 x 1,350.00), plus the \$50.00 filing fee for the 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. 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, unless 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 Act.

Dated: September 14, 2012.

Residential Tenancy Branch