



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 double the security deposit paid to the Landlord.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 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 Landlord?

Background and Evidence

This tenancy began on January 4, 2012, with the parties entering into the standard form tenancy agreement. The monthly rent was \$750.00 and the Tenants paid the Landlord a security deposit of \$375.00 on or about January 3, 2012. The Tenants vacated the premises on July 26, 2012.

The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to, by attaching it to the Landlord's door. The Landlord acknowledged during the hearing that she received the forwarding address in writing on July 24, 2012.

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

The appearing Tenant testified that the Landlord performed an incoming and outgoing condition inspection report.

In reply, the Landlord testified that the Tenant brought an extra cat into the rental unit and it caused health problems for the Landlord and her family.

The Landlord testified that the Tenants did not give 30 days notice they were leaving.

The Landlord further testified that she called the branch and someone informed her to send the Tenant a letter explaining why she was not returning the deposit. The Landlord testified she did not know she had to file a copy of this letter.

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 Landlord could retain any portion of the security deposit.

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 Tenant, to retain a portion of the security deposit, as required under section 38.

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. I am enclosing a copy of a guidebook for the Landlord to refer to in future.

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

The Landlord 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 the written agreement of the Tenants. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Furthermore, the tenancy agreement between the parties sets out how the deposit will be dealt with at the end of the tenancy.

For these reasons, I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$750.00**, comprised of double the security deposit (2 x \$375.00). The Tenants are given a formal Order in these 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.

Lastly, I note the Tenants included with their Application a monetary worksheet for \$113.35 in monetary claims, however, this amount was not included with the amount

requested for the security deposit and ultimately was not dealt with in this hearing. Therefore, the claim for this amount is dismissed with leave to reapply.

Even though the security deposit has been conclusively dealt with here, the Landlord should be aware they still have a right to file a claim against the Tenants for breaches of the Act or the tenancy agreement.

Conclusion

The Landlord breached section 38 of the Act by failing to return the deposit, or file a claim to keep it, within 15 days of the later of receipt of the forwarding address or end of the tenancy. The Tenants are granted a monetary order for double the security deposit.

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: November 05, 2012.

Residential Tenancy Branch