



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

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, for a return of a portion of rent and for the return of the filing fee for the Application.

Both parties appeared at the hearing, and the Landlord was represented by an Agent. 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?
Is the Tenant entitled to a return of any rent paid for July 2012?

Background and Evidence

The Tenant paid the Landlord a security deposit of \$350.00 in April of 2012.

The Tenant vacated the premises on July 13, 2012.

The Tenant paid the Landlord rent for all of July. In evidence the Tenant provided a copy of a receipt dated July 4, 2012, signed by the Landlord for \$725.00 indicating it was for July 2012 rent.

The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it ~~registered~~ by regular mail to the Landlord

on August 2, 2012, and by placing a copy of the forwarding address in the Landlord's mailbox on August 2, 2012.

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

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

The Agent for the Landlord testified that the Landlord alleges the Tenant caused damage to the rental unit and did not give proper notice. According to the Agent the Landlord wants to go to court to pursue his claims.

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 Tenant 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.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit 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.

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 Tenant. Here the Landlord did not have any authority under the Act to keep any

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

However, I do not find the Tenant has proven a loss in regard to July 2012 rent. The Tenant testified she gave Notice to end the tenancy on June 9, 2012, and moved out on July 13, 2012. Under the Act, the Landlord is entitled to all the rent for July, even if the Tenant moved out early in July. Therefore, I do not find the Tenant is entitled to the return of any rent for July 2012.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$750.00**, comprised of double the security deposit (2 x \$350.00) 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.

Conclusion

The Landlord breached the Act by failing to perform condition inspection reports and did not file an Application to keep the deposit within 15 days of receiving the forwarding address of the Tenant in writing. The Landlord must pay the Tenant double the security deposit, plus the filing fee for the Application.

The Tenant's claim for return of July rent is dismissed.

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 13, 2012.

CORRECTED DECEMBER 3, 2012

Residential Tenancy Branch