



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 and for the return of the filing fee for the Application.

Both parties appeared at the hearing. The Landlord was represented by Legal Counsel. The hearing process was explained and the participants were asked if they had any questions. The Tenant provided affirmed testimony and both parties 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.

Preliminary Issues

At the outset of the hearing the Tenant explained he was not aware the Landlord would be represented at the hearing by a lawyer. The Tenant testified he had only dealt with the Agent for the Landlord during the tenancy and had not met the Landlord named on the tenancy agreement. Legal Counsel for the Landlord explained that his client was the person named on the tenancy agreement and the Tenant had named the correct party.

Pursuant to the rules of procedure the Landlord is entitled to have a representative at the hearing. The preferred method is for the Landlord to provide advance notice to the Tenant that they would be represented by someone else at the hearing. Nevertheless, as the representative of the Landlord is a member of the Law Society of British Columbia, I accepted their submission that they had authority to act for the Landlord in this matter and the hearing proceeded.

Issue(s) to be Decided

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

Background and Evidence

The Tenants paid the Landlord a security deposit of \$625.00 on or about May 29, 2009. The Tenants vacated the premises on May 31, 2012.

The appearing Tenant testified he personally gave the Agent for the Landlord a written notice of the forwarding address to return the security deposit to on May 31, 2012.

The Tenants also sent the Agent for the Landlord an email on July 9, 2012, with the forwarding address. The Tenants then sent a further copy of the forwarding address by mail to the Landlord on August 10, 2012.

Legal Counsel for the Landlord submitted that the Landlord had written the Tenants on August 15, 2012, to explain the security deposit was not going to be returned to them. The Landlord had a complaint about carpets in the rental unit.

The Tenants testified that the Agent for the Landlord did not conduct a written, outgoing condition inspection report, or if it was done, they did not receive a copy of it.

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.

I find that the tenancy ended on May 31, 2012, and the Landlord had the forwarding address in writing for the Tenants no later than August 15, 2012.

I find there was 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 the outgoing condition inspection report in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to section 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 an Arbitrator, 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. Therefore, 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 sections 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,300.00**, comprised of double the security deposit (2 x \$625.00) and the \$50.00 fee for filing this Application.

The Tenants are granted 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.

Lastly I note that during the hearing Legal Counsel for the Landlord explained that the Landlord had recently forwarded a cheque via courier to the Tenants for the return of the original deposit amount. As the Tenants were not waiving the doubling of the deposit, I explained that if they received this cheque they could still proceed to enforce the order against the Landlord for the remaining balance due, after taking into account the partial payment.

Conclusion

The Landlord breached the Act, and I must order the Landlord to pay the Tenants double the security deposit under section 38 of the Act, as well as the filing fee for the Application. The Tenants are granted a monetary order for \$1,300.00, which is enforceable in Provincial 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: November 29, 2012.

Residential Tenancy Branch