



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 Tenant 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.

Only the Tenant appeared at the hearing. The Tenant provided affirmed testimony and was given the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified and supplied documentary evidence that they served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on September 14, 2012, and deemed received under the Act five days later. Although the Landlord or an Agent did not appear at the hearing, I find the Agent and Landlord have been duly served in accordance with the Act.

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

The Tenant paid the Landlord a security deposit of \$470.00 on or about May 20, 2009. The Tenant vacated the rental unit on July 30, 2012, and the tenancy ended on July 31, 2012.

The Tenant provided the Agent for the Landlord with a written notice of the forwarding address to return the security deposit to, by sending an email to the Agent for the Landlord on or about July 31, 2012. In evidence the Tenant provided a copy of an email

from an Agent for the Landlord dated August 1, 2012, acknowledging receipt of the forwarding address.

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

The Tenant testified that the Landlord or their Agents did not perform incoming or outgoing condition inspection reports.

The Tenant testified she received a cheque in the amount of \$470.00 for the original sum of the deposit on or about October 5, 2012. The Tenant did not waive her right to the return of double the deposit or the filing fee for the Application.

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.

I find the Landlord had the Tenant's forwarding address to send the deposit to no later than August 1, 2012. The parties had established communication by email and I find the Tenant sufficiently served the Landlord with the forwarding address by this email. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or the 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 Tenant 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 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.

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 **\$520.00**, comprised of double the security deposit (2 x \$470.00), the \$50.00 fee for filing this Application, *less the \$470.00* returned to the Tenant in October of 2012.

Conclusion

The Tenant is 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.

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