



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with a tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant submitted documentary and photographic evidence to the Branch but did not serve the evidence upon the landlord. I noted that the tenant's evidence consisted of a tenancy agreement and a move-in inspection report provided to him by the landlord; along with photographs. The landlord acknowledged having a copy of the tenancy agreement and move-in inspection report and I noted that the landlord had a copy of those same documents in his evidence package. Therefore, I accepted those documents as evidence but excluded the tenant's photographs.

The tenant stated that he had not received any evidence from the landlord. I noted that the landlord had served his evidence upon the Branch after the time limit imposed by the Rules of Procedure and I enquired as to when the landlord served his evidence upon the tenant. The landlord testified that he sent his evidence to the tenant via regular mail "last week".

The Rules of Procedure provide that evidence is to be received by the other party five days before the scheduled hearing. The Act provides that mailed documents are deemed received five days after mailing. Therefore, the landlord was required to mail his evidence to the tenant at least 10 days before the scheduled hearing. Given the Christmas holidays and the weekend I found that the landlord failed to allow sufficient time for mailing in order for the tenant to receive the landlord's evidence five days before the hearing. The parties were informed that the landlord's documentary and photographic evidence, except the tenancy agreement and move-in inspection report, would be excluded but that the landlord would be provided the opportunity to describe his evidence verbally during the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

I was provided the following undisputed facts and information by both of the parties:

- The tenancy started August 1, 2011 and the tenant paid a security deposit of \$360.00;
- A written move-in inspection report was prepared and signed by both parties;
- The tenancy ended August 31, 2012 and the parties participated in a move-out inspection together on September 3, 2012;
- The landlord did not prepare a move-out inspection report;
- The tenant did not authorize the landlord to make any deductions from the security deposit in writing;
- The tenant gave his forwarding address to the landlord, in writing, on September 17, 2012;
- The landlord has not returned the security deposit to the tenant and did not file an Application for Dispute Resolution to claim against the deposit.

The landlord submitted that he used the tenant's security deposit to pay for a new toilet seat and to pay for cleaners. The landlord submitted that he had photographs and receipts to support his position that the tenant left the unit unclean and had damaged the toilet seat. The tenant did not agree to the landlord's submissions regarding damage and cleaning and rejected an offer of settlement proposed by the landlord.

Analysis

As the parties were informed during the hearing, the condition of the property at the end of the tenancy and the landlord's submissions regarding costs incurred for cleaning and damage were not issues for me to decide as the landlord had not filed an Application for Dispute Resolution seeking compensation for cleaning and damage. The landlord remains at liberty to file his own Application for Dispute Resolution to seek compensation for cleaning and damage within two years of the tenancy ending.

Rather, the issues for me to determine for this proceeding include: whether either party extinguished their right to the security deposit; and, whether the landlord complied with the requirements of the Act with respect to handling of the security deposit.

Based upon the undisputed testimony of the parties and the requirements of section 36 of the Act, I find the landlord extinguished his right to make deductions from the security deposit for damage to the unit by failing to complete a move-out inspection report.

Other deductions from the security deposit may be made by a landlord in limited circumstances as provided by the sections 38(3), 38(4) and 38(5) of Act and such deductions must be made with the written consent of the tenant or the authorization of an Arbitrator. The landlord did not have the written consent of the tenant or an Arbitrator to make any deductions from the security deposit.

Section 38(1) of the Act requires the landlord to either return the security deposit to the tenant or make an Application for Dispute Resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Where a landlord violates section 38(1) of the Act, the security deposit must be doubled pursuant to section 38(6) of the Act.

Since the tenant provided his forwarding address to the landlord, in writing, on September 17, 2012 the landlord had until October 2, 2012 to refund the deposit to the tenant or file an Application for Dispute Resolution claiming against the deposit to avoid doubling of the deposit. The landlord did neither of these things. Therefore, I find the landlord failed to meet the landlord's obligations under section 38(1) of the Act and must now pay the tenant double the security deposit.

The tenant is awarded \$720.00 plus recovery of the \$50.00 filing fee paid for this application. The tenant is provided a Monetary Order in the total amount of \$770.00 to serve upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenant was successful in this application and has been provided a Monetary Order in the amount of \$770.00 to serve upon the landlord and enforce as necessary.

This decision 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: December 28, 2012.

Residential Tenancy Branch