



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for return of 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.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Background and Evidence

The tenancy commenced in August 2009 and ended September 30, 2012. The tenants paid a security deposit of \$800.00. The tenants participated in a move-in and move-out inspection with the landlord and condition inspection reports were prepared. The tenants provided their forwarding address to the landlord in writing on September 30, 2012. The tenants did not authorize any deductions from the security deposit in writing. The landlord refunded the security deposit in two instalments: \$600.00 mailed and postmarked October 15, 2012; and, \$200.00 mailed October 16, 2012 and postmarked October 18, 2012.

The tenants are requesting their security deposit be doubled as they received the refund cheques more than 15 days after the tenancy ended.

The landlords were of the position that additional cleaning was required in the rental unit, which was missed at the time of the move-out inspection as the tenants were late moving out and there was a rush to complete the inspection. The landlord sent a refund of \$600.00 to the tenants and communicated that they intended to deduct \$200.00 for cleaning. The tenants responded and disagreed with a \$200.00 deduction for cleaning. the landlord proceeded to refund the remainder of the security deposit in recognition of a good tenancy relationship. The \$200.00 refund was put in the mailbox one day after the 15 day time limit and post-marked three days after the 15 day time limit.

Analysis

As the parties were informed during the hearing, the landlord's submissions regarding cleaning were not issues for me to decide as the landlord had not filed an Application for Dispute Resolution. The landlord remains at liberty to make a separate application for damages or loss within two years of the tenancy ending.

The issues for me to determine with this Application are 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.

I was not presented any evidence to indicate that either party extinguished their right to the security deposit. Had the tenants authorized a deduction for cleaning, in writing, the landlord may have had the right to retain that portion of the security deposit. However, in this case, the landlord did not have such authorization. Accordingly, the landlord was required to either repay the security deposit to the tenants 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.

As the tenancy ended and the tenants provided a forwarding address in writing on September 30, 2012, the landlord had until October 15, 2012 to file an Application for Dispute Resolution or refund the security deposit to the tenants. The landlords did not file an Application but I find the landlord paid \$600.00 on October 15, 2012 as evidenced by the post mark on the envelope.

In light of the above, I find the landlord violated the Act with respect to the balance of \$200.00 that was mailed more than 15 days after the statutory time limit.

Where a landlord violates section 38(1) of the Act, the landlord must pay the tenant double pursuant to section 38(6). Accordingly, I find the landlord was required to pay the tenants double the amount not paid by October 15, 2012 for a total of \$400.00. Taking into account the tenants have already received \$200.00 I provide the tenants a Monetary Order for the balance of \$200.00.

I further award the \$50.00 filing fee to the tenants as their claim had merit.

Conclusion

The tenants have been provided a Monetary Order in the total amount of \$250.00 to serve upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of the court if 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: January 24, 2013

Residential Tenancy Branch

