



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenants for a monetary order for return of double the security deposit, and the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by personal service on November 23, 2012, which was witnessed, the landlord did not appear. I find that the landlord has been duly served in accordance with the Act.

The tenants appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of double the security deposit?

Background and Evidence

The tenants paid a security deposit of \$700.00 on or about September 24, 2010. The tenants vacated the premises on September 1, 2012.

The tenants testified they provided the landlord with their forwarding address by email on September 11, 2012, which requested the return of their security deposit.

The tenants testified they also printed the email, signed it and sent it by registered mail on October 31, 2012. A copy of the Canada post tracking number was provided as evidence. The tenants stated they did not sign over any portion of the security deposit.

The tenants testified that the landlord did not perform neither incoming nor outgoing condition inspection reports and they provided the keys to the new tenants.

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, plus interest.

There was also no evidence to show that the landlord had applied for dispute resolution, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenants, to retain a portion of the security deposit.

By failing to perform incoming or outgoing condition inspection reports the landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

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. 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 or interest.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pays the tenants the sum of \$1,450.00, comprised of double security deposit (\$700.00) on the original amount held, 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.

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: February 26, 2013

Residential Tenancy Branch

