



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 and pet damage deposits paid to the Landlord and for the return of the filing fee for the Application.

One of the Tenants appeared at the hearing. The appearing Tenant provided affirmed testimony and was provided 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 January 12, 2013, and deemed received under the Act five days later. The Tenant testified that the registered mail was refused by the Landlord. I note that neglect or refusal to accept registered mail is not a ground for review under the Act. I find the Landlord has 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 or the tenancy agreement by the Landlord?

Background and Evidence

The Tenants paid the Landlord a security deposit of \$600.00 on or about July 10, 2011. According to the testimony of the Tenant, on or about September 1, 2012, the Tenants paid the Landlord a pet damage deposit of \$600.00.

The Tenants vacated the premises on December 23, 2012.

The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it registered mail to the Landlord on or about October 1, 2012. On October 23, 2012, the Landlord and the Tenants met and the Landlord agreed in writing to return the deposits to the Tenants. The Tenants also sent the Landlord an email on December 23, 2012, requesting the return of the deposits and included their forwarding address.

The Tenants did not sign over a portion of the security or pet damage deposit.

The Tenant testified that the Landlord did perform an incoming condition inspection report, although the Agent for the Landlord did not attend at the rental unit for the outgoing condition inspection report.

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 and the tenancy agreement he signed with the Tenants.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security or pet damage deposits.

There was also 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 deposits, 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 or pet damage deposit for damages, pursuant to section 36(2) of the Act.

Paragraph 4 of the tenancy agreement signed by the Landlord and Tenants sets out the following with regard to the deposits:

- 1) The landlord agrees

- a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property,
- b) to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation, and
- c) to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless
 - i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or
 - ii) the landlord applies for dispute resolution under the Residential Tenancy Act within 15 days of the end of the tenancy agreement to claim some or all of the security deposit or pet damage deposit.

2) The 15 day period starts on the later of

- a) the date the tenancy ends, or
- b) the date the landlord receives the tenant's forwarding address in writing.

3) If a landlord does not comply with subsection (1), the landlord

- a) may not make a claim against the security deposit or pet damage deposit, and
- b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both.**

4) The tenant may agree to use the security deposit and interest as rent only if the landlord gives written consent.

[Emphasis added.]

Therefore, I find the Landlord has breached section 38 of the Act and paragraph 4 of the tenancy agreement. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies and tenancy agreements.

The security and pet damage deposits are held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep the deposits 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 deposits through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenants. Here the Landlord did not have any authority under the Act or tenancy agreement to keep any portion of the security or pet damage deposits. Therefore, I find that the Landlord is not entitled to retain any portion of the deposits and must pay the Tenants double the amount of the deposits, as well as the filing fee for the Application.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$2,450.00**, comprised of double the security and pet damage deposits (2 x 1,200.00) and the \$50.00 fee for filing this Application.

Conclusion

The Landlord breached section 38 of the Act and paragraph 4 of the tenancy agreement he signed with the Tenants. The Landlord is ordered to pay the Tenants double the deposits and their filing fee for the Application.

The Tenants are 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 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: April 02, 2013

Residential Tenancy Branch

