



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 an Application by the Tenants 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.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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 Tenants paid the Landlord a security deposit of \$450.00 on or about September 1, 2012. The Tenants vacated the premises on January 1, 2013.

The appearing Tenant testified that the other Tenant, who did not appear at the hearing, had provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it in an email a few days after the tenancy ended. The appearing Tenant suggested the email was sent on January 3, 2013.

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

The appearing Tenant testified that the Landlord did not perform an incoming or outgoing condition inspection report.

The Landlord testified that the Tenants breached a three year, fixed term tenancy. The Landlord testified that the Tenants orally agreed he could keep the security deposit since they breached the lease. Later in the hearing the Landlord changed this testimony and said he told the Tenants that if they found someone to move into the rental unit in their place, he would return the security deposit.

The Landlord testified he did not know if the Tenants had sent him their forwarding address. He testified he had no forwarding address from them in his records.

The appearing Tenant testified that the Tenants did not agree to a three year lease and they thought it had been for one year. The Tenant testified that the Landlords had not provided them with a copy of the tenancy agreement in any event.

I note that neither party provided a copy of the tenancy agreement in evidence.

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; however, I do not order the return of double the deposit, as I find the Tenants did not prove they provided the Landlord with their forwarding address in writing in accordance with the Act.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this instance I find the Tenants did not do what was required to minimize their loss. The Tenants had insufficient evidence that they sent the Landlord their forwarding address in writing. Furthermore, even if they had evidence of this email to the Landlord with the forwarding address, I note that email communication is not a method of service recognized under the Act and that this type of notice required the Tenants' actual signature. For these reasons, I decline to award double the security deposit.

Nevertheless, 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 is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

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 with the written agreement of the Tenants. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. This leads me to 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 Tenants the sum of **\$500.00**, comprised of the \$450.00 security deposit and the \$50.00 fee for filing this Application.

Conclusion

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 16, 2013

Residential Tenancy Branch

