



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 the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenants entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on September 1, 2010 as a month to month tenancy for a monthly rent of \$1,000.00 due on the first of each month with a security deposit of \$500.00 paid. The tenancy ended on February 2, 2013.

The tenants provided documentary evidence that they provided the landlord with their forwarding address on February 6, 2013 by registered mail. The landlord confirmed that she received this mail and it was likely received on February 7, 2013. The landlord has not filed an Application for Dispute Resolution seeking to claim against the deposit.

The parties acknowledge that at the start of the tenancy the landlord and male tenant completed a walk through inspection of the rental unit but that a Condition Inspection Report was not completed.

The male tenant submits he had wanted the landlord to complete the move out condition inspection on February 2, 2013 but he was not available so they had arranged to complete the move out inspection on February 3, 2013. The male tenant states he did not attend because the landlord had informed him that he would be retaining the security deposit. The landlord confirmed another opportunity was not provided to the tenant in writing.

Both parties acknowledge the landlord had provided a cheque to the tenants in the amount of \$270.54 that had been dated January 15, 2012 and was therefore stale dated and not cashable by the tenants.

Analysis

Section 23 requires a landlord and tenant to complete a move in inspection and the landlord to complete a condition inspection report at the start of the tenancy. Section 24 stipulates that if the landlord does not complete the condition inspection report they extinguish their right to claim against the deposit.

Section 35 requires a landlord to offer a tenant at least two opportunities to complete a move out inspection. Residential Tenancy Regulation Section 17 stipulates that the second opportunity must be in writing and in the approved form. If this second opportunity is not provided and done so in writing Section 36 stipulates that landlord has again extinguished their right to claim against the deposit.

From the landlord's testimony, I find the landlord failed to comply with the requirements under both Sections 23 and 35 and has therefore extinguished their right to claim against the deposit.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the testimony of both parties, I find the tenancy ended on February 2, 2013. From the testimony of the landlord I find she received the tenants' forwarding address on February 7, 2013. As such, I find the landlord had until February 22, 2013 to either return the deposit or file an Application for Dispute Resolution seeking to claim against the deposit.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,050.00** comprised of \$1,000.00 double the amount of the security deposit and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: June 03, 2013

Residential Tenancy Branch

