



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Trainwest Management And Consulting Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant has filed an application seeking an order to have double the security deposit returned. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to any of the above under the Act, the regulation or the tenancy agreement?

Background and Evidence

Both parties agree to the following:

The tenancy began on or about March 1, 2008 and ended on March 1, 2013. Rent in the amount of \$1400.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$700.00. A condition inspection report was conducted at move in and move out for this tenancy. Both parties participated in each inspection and both parties signed the report. The tenant provided his forwarding address in writing at the time of the move out inspection.

The tenant gave the following testimony:

The tenant stated that since the landlord did not file for dispute resolution or return his deposit within fifteen days of receiving his forwarding address he is entitled to the return of double his deposit and that he is no longer responsible for any of the damage.

The landlord gave the following testimony:

The landlord stated that the suite required minor repairs. The landlord stated that discussions were ongoing and that he was seeking out estimates for the work and that was the reason he did not file for dispute resolution within fifteen days of the end of tenancy or receiving the tenants forwarding address in writing. The landlord is seeking \$1216.46 for the replacement of blinds, a garburator, light switches, and window screens.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I will deal with the tenants' application and my finding as follows:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

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

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord did not file for dispute resolution or return the security deposit to the tenant as required by the Act. I find that the tenant is entitled to the return of double the security deposit $\$700.00 \times 2 = \1400.00 plus the interest accrued to the date of this judgment of \$8.78 for a total award of \$1408.78.

I will deal with the landlords' application and my findings as follows:

The landlord is seeking \$1216.46 for the costs incurred to conduct repairs. The landlord has submitted a signed condition inspection report, photos and receipts to support his claim. The tenant acknowledged the landlords claim but felt that since the landlord did not notify him of the total cost within fifteen days the tenant was no longer liable for them. I am satisfied that the landlord has provided ample evidence to support his claim. I find that the landlord is entitled to the costs of the repairs in the amount of \$1216.46.

In summary the parties are entitled to the following:

The landlord is entitled to $\$1216.46 + \50.00 filing fee = \$1266.46.

The tenant is entitled to $\$1408.78 + \50.00 filing fee = \$1458.78.

Section 72 of the Act allows for the “offsetting” of repayments. As both parties have been awarded an amount during this hearing I will apply the landlord’s award against the tenant’s leaving an amount of \$192.32 to the tenant.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$192.32. This 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: July 02, 2013

Residential Tenancy Branch