



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenants filed for a monetary order for return of double the security deposit under section 38 of the Act, and to recover the filing fee for the Application.

The Landlord filed for monetary orders for alleged damage at the rental unit, to keep the security deposit in partial satisfaction of the claim, for a monetary order for money owed or compensation under the Act or tenancy agreement and to recover the filing fee for the Application.

Only one of the Tenants appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified she served the Landlord with the Notice of Hearing and Application, by registered mail, sent on May 25, 2013. Under the Act, the Landlord was deemed served five days later. Furthermore, the Landlord filed their own Application and it was scheduled to be heard at the same time as the Tenant's Application.

This matter was set for hearing by telephone conference call at 9:30 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Tenant.

I am satisfied the Landlord has been duly served with the Notice of Hearing, in accordance with the Act.

As the Landlord did not attend the hearing by 9:40 a.m., and the Tenant appeared and was ready to proceed, I dismiss the Landlord's claim without leave to reapply.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Background and Evidence

According to the testimony of the Tenant, this tenancy began on or about April 1, 2012, with the parties agreeing to monthly rent of \$980.00. The Tenant testified she paid a security deposit of \$445.00 on or about April 1, 2012.

The Tenants vacated the rental unit on or about April 29, 2013. The Tenant testified she provided the Landlord with her forwarding address in an email sent on May 2, 2013. The Tenant testified and submitted evidence that the parties corresponded by email and that the Landlord replied to the Tenants' emails. I find the parties communicated by email which leads me to find the Landlord had the forwarding address of the Tenants on May 2, 2013. The Landlord did not file their Application to claim against the deposit until May 23, 2013, some 21 days later.

The Tenant agreed in their Application and in her testimony that the Landlord may retain \$80.00 towards power washing the driveway.

The Tenant testified that the Landlord did not perform an incoming condition inspection report. The Tenant further testified that a written list of items was prepared at the end of the tenancy; however, the Tenant did not agree to these items. A copy of this list was provided 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 section 38 of the Act.

There was 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 security deposit, as required under section 38. In fact the Landlord filed outside of the time limit imposed, 21 days after receipt of the forwarding address.

I have reviewed the list of items prepared by an Agent for the Landlord at the end of the tenancy. Under the Act and section 20 of the regulation to the Act, there is standard information that must be included on a condition inspection report in order for it to be in the approved form. For example, the following information is required on a condition inspection report: the correct legal names of the Landlord and Tenant, the date on which the Tenant is entitled to possession of the rental unit, the address for service of the Landlord, and an appropriate space for the Tenant to indicate agreement or disagreement with the Landlord's assessment of any item of the condition of the rental unit. There are several other terms and conditions. None of the above examples are found in the list provided by the Landlord. For these reasons, I find the Landlord did not conduct an outgoing condition inspection report in accordance with the Act.

Furthermore, the Landlord failed to perform an incoming condition inspection report and therefore, extinguished any right to claim against the security deposit pursuant to sections 24(2) and 36(2) of the Act.

I find 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, or the written agreement of the Tenant.

Here the Landlord has authority from the Tenants to keep \$80.00 from the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the balance of the security deposit and this portion must be doubled in accordance with the Act and policy guideline 17 to the Act.

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 **\$780.00**, comprised of double the security deposit balance after the agreed to \$80.00 is deducted ($\$445.00 - \$80.00 = \365.00 and $2 \times \$365.00 = \730.00) and the \$50.00 fee for filing this Application.

Conclusion

The Landlord has breached section 38 of the Act by failing to apply to keep the security deposit within 15 days of the receipt of the Tenants' forwarding address in writing, and extinguished any right to claim against the deposit by failing to perform incoming and outgoing condition inspection reports in accordance with the Act.

The Tenants are granted a monetary order for double the balance of the deposit after the deduction as agreed to by them, plus the 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: August 27, 2013

Residential Tenancy Branch

