



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 Tenant 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

This tenancy began on May 1, 2011, with the parties signing a written, standard form tenancy agreement on or about April 12, 2011. The monthly rent was \$1,420.00 and the Tenant paid the Landlord a security deposit of \$650.00 and a pet damage deposit of \$650.00. I note that no interest has accrued on the deposits under the Act and regulation.

The Tenant vacated the premises on or about April 28, 2013. The Tenant testified that at the end of the tenancy the Landlord returned \$650.00 of the deposits to him, and the parties referred to this deposit as the security deposit during the hearing. The Tenant testified that he acknowledged to the Landlord at the end of the tenancy that he was

responsible for damage to some window blinds in the rental unit. The Tenant testified that is why the other \$650.00 was left with the Landlord. During the hearing the Tenant agreed the Landlord could deduct \$30.00 for a small blind and \$94.06 for a large blind from the deposit still held.

On May 1, 2013, the Tenant sent the Landlord an email with the forwarding address to return the balance of the deposit to. The Landlord acknowledged receipt of the email and the parties did correspond by email. Therefore, I find the Landlord had the forwarding address of the Tenant on May 1, 2013.

Both parties agreed that the Landlord did not perform an incoming condition inspection report in accordance with the Act. The parties did a “walkthrough”, but nothing was recorded in writing. There was no outgoing condition inspection report performed.

The Landlord had submitted a list of items that had to be fixed or cleaned at the rental unit after the Tenant vacated, which he alleges the Tenant was responsible for. The Landlord submitted that the Tenant owed \$593.26 for these; however, the Landlord did not file an Application to claim for these alleged losses. It was explained that the Landlord is unable to make a monetary claim against the Tenant without filing his own Application to claim against the Tenant.

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 and paragraph 4 of the tenancy agreement.

There was no evidence to show that the Landlord had applied for arbitration to retain the deposit, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38 of the Act and paragraph 4 of the tenancy agreement.

By failing to perform incoming or outgoing condition inspection reports in accordance with sections 23 and 35 of the Act, and paragraph 6 of the tenancy agreement, the Landlord extinguished the right to claim against either deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

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.

The security deposit is held in trust for the Tenant 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 did not have any authority under the Act to keep any portion of the security deposit. However, the Tenant did acknowledge during the hearing that the Landlord could retain \$124.06 for the window blinds.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,101.88**, comprised of double the security deposit after the deduction for the blinds ($650.00 - 124.06 = 525.94$ and $2 \times 525.94 = 1,051.88$) and the \$50.00 fee for filing this Application.

Conclusion

The Tenant is granted 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 30, 2013

Residential Tenancy Branch

