



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a tenant's Application for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Background and Evidence

The tenancy commenced December 15, 2011 and the landlords collected a \$400.00 security deposit. The monthly rent of \$800.00 was due on the 15th day of every month. The tenancy ended in May 2013 although the parties were in dispute as to which date exactly. The tenant submitted that they moved out of the rental unit on May 17, 2013. The landlord submitted the tenants were in possession of the unit until May 20 or 21, 2013. The landlords did not prepare move-in or move-out inspection reports.

The tenants provided the landlords with a forwarding address in writing by way of a registered letter sent May 27, 2013. The landlord responded by way of letter dated May 31, 2013, sent to the tenant's forwarding address, advising the tenants the property was damaged and the tenants did not vacate by May 15, 2013.

It was undisputed that the tenants did not authorize the landlords to make any deductions from the security deposit in writing. The landlord confirmed that the landlords have not yet filed an Application for Dispute Resolution seeking compensation from the tenants.

Analysis

As the parties were informed during the hearing, the landlord's claims that the landlords suffered damages or loss were not issues for me to decide for this proceeding as the landlords have not made an Application for Dispute Resolution. The purpose of this hearing was to hear the tenant's Application and determine whether the landlords complied with the Act with respect to the security deposit. The landlords remain at liberty to make a separate Application for damages or loss.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to make deductions from a security deposit provided the landlord has the tenant's written consent to do so or the prior authorization of an Arbitrator, as a delegated authority of the Director. Where the landlord does not have authorization to make deductions from the security deposit, section 38(1) the landlord must either return the security deposit to the tenant or file an Application for Dispute Resolution within 15 days from the later of the day: the tenancy ended, or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with the above requirements, section 38(6) of the Act provides that the landlord loses the right to claim against the security deposit and must pay the tenant double the security deposit.

In this case, the tenancy ended on or before May 21, 2013 and the tenants provided a forwarding address to the landlord in writing, which was received by the landlord no later than May 31, 2013. The landlord did not have the tenant's written consent to make deductions from the security deposit, did not file an Application for Dispute Resolution, and did not return the security deposit to the tenant within 15 days. Therefore, I find the landlords violated the requirements of the Act and must pay the tenants double the security deposit.

As the tenants were successful in this Application, the tenants are awarded the filing fee paid for making this Application.

In light of the above, the tenants are provided a Monetary Order in the total amount of \$850.00 comprised of double the security deposit plus the filing fee [(\$400.00 x 2) + \$50.00].

To enforce the Monetary Order it must be served upon the landlords and it may be filed in Provincial Court (Small Claims) to enforce as an Order of that court if necessary.

Conclusion

The tenants have been provided a Monetary Order in the sum of \$850.00 to serve and enforce as necessary.

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: October 29, 2013

Residential Tenancy Branch

