



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlord, for return of a portion of rent for one month, 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?

Are the Tenants entitled to a return of rent for a portion of one month?

Background and Evidence

The Tenants testified they paid the Landlord a security deposit of \$500.00 in May of 2009, the month before the tenancy started. At the end of the tenancy the monthly rent was \$1,000.00.

The Tenants and the Landlord testified there was a fire at the rental unit on the morning of June 13, 2013. The Tenants vacated the rental unit that day and did not stay in the rental unit from that day onward.

The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to, by personally giving it to the Landlord on or about June 19, 2013. The forwarding address was contained in a letter given to the Landlord notifying the Landlord that they would not be living in the property any longer due to the smoke damage. The Tenants testified that the Landlord did not perform an incoming or outgoing condition inspection report.

The Tenants did not sign over a portion of the security deposit, although they agreed during the hearing that the Landlord could retain \$147.93 from the deposit to pay for a hydro bill paid by the Landlord.

The Tenants had paid rent for the entire month of June and claim for a return of rent for June 14 to 30, 2013, amounting to \$566.67.

The Landlord testified she did not file a claim to keep the deposit because she alleges the Tenants caused the fire, and she has lost money paying for the cleanup. The Landlord alleged the Tenants caused this fire, so she should be able to keep the deposit to pay for cleanup.

The Landlord claims the Tenants left a lot of garbage at the rental unit and did not clean this up. The Landlord testified she did not want to file a claim against the Tenants because she did not have time to deal with a claim due to the fire and her personal, recent family events.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

There was also 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.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security 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. 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 did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

I also find the Landlord must return a portion of the rent for June 2013, as the tenancy appears to have been frustrated and could not continue due to the fire. I allow the Tenants \$566.67 for this claim.

I explained to the Landlord and the Tenants during the hearing that the Landlord still has a right to claim against the Tenants for any losses the Landlord can prove they suffered; however, the security deposit issue and rent issues have now been dealt with in this hearing.

I also note that the Landlord had supplied some evidence to the Tenants prior to the hearing and the Landlord testified she faxed this evidence into the branch on Sunday September 29, 2013; however, at the time of the hearing on October 7, 2013, I did not have a copy of this evidence before me, nor was there a record the Branch had received it as of the hearing date.

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 **\$1,320.81**, comprised of the doubled balance of the security deposit after accounting for the hydro bill (\$500.00 - \$147.93 = \$352.07, doubled balance $2 \times \$352.07 = \704.14), plus the return of rent of \$566.67 and the \$50.00 fee for filing this Application.

Conclusion

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.

The Landlord may still file an Application for her own claims.

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: October 07, 2013

Residential Tenancy Branch

