



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, FF

Introduction

The tenant applies for the return of her security deposit, doubled. The landlord seeks a monetary order related to damage to the premises.

Issue(s) to be Decided

With respect to the tenants' claim section 38(1) of the Act requires in most cases, that the landlord, within 15 days of the end of the tenancy or the date on which the landlord received the tenants' forwarding address, must either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenants double the amount of the security deposit (section 38(6)). The issue is whether the tenant is entitled to the return of the security deposit, and whether the doubling provisions apply.

With respect to the landlord's claim, the issue is whether the tenant owes money to the landlord for damage caused to the premises.

Background and Evidence

This tenancy began February 1, 2013 and ended on May 1, 2013. The tenant paid a security deposit of \$387.00 at the start of the tenancy, none of which has been returned. The landlord was properly provided with the tenant's forwarding address on April 15, 2013. The tenant did not consent in writing to the landlord retaining any of the deposit. The landlord did not file a formal application to retain the deposit within the required 15 day period after receipt of the forwarding address. There was no Condition Inspection Report prepared either at the start or the end of the tenancy.

The premises had been newly renovated prior to this tenancy. When the tenancy ended, the landlord found the laundry room door kicked in, bathroom door damaged, the freezer door broken, 2 broken window screens, marks and holes punched into the walls, and a carport beam damaged. The tenant's mother attempted some repair to the premises. She contends the repair to the laundry door left it in as good condition as at the start of the tenancy.

Analysis

Section 38 of the Residential Tenancy Act and Policy Guideline 17 govern the tenant's claim. The notable factors at hand are:

1. The landlords failed to complete a Condition Inspection Report at the start or the end of the tenancy, thereby extinguishing his right to retain the tenant's security deposit (see section 38(5));
2. The landlord failed to return the tenant's deposit or file a claim within the required 15 day period (see section 38(1)).

The tenant is therefore entitled to the return of double the deposit, which totals \$774.00.

The tenant left the premises in a damaged condition. I accept the landlord's testimony that the repairs attempted by the landlord failed to restore the premises to their original condition. I find that the tenant must compensate the landlord for damage and painting costs of the laundry door and bathroom door, filling and painting costs for damage to the living room, costs of 2 window screens, damage to the freezer, and damage to the carport beam. The cost of these repairs totals \$805.00. The tenant must also reimburse the landlord for his filing fee of \$50.00. The total awarded to the landlord is \$855.00.

Setting off one award from the other leaves a balance due by the tenant to the landlord of \$81.00.

Conclusion

The tenant must pay the sum of \$81.00 to the landlord.

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: November 13, 2013

Residential Tenancy Branch