



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Regent Park Pinnacle Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord. While the tenant had a witness available the witness was not called to provide any testimony.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of the balance of her security deposit, pursuant to Sections 23, 24, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by them on September 1, 2012 for a 1 year and 20 day fixed term tenancy beginning on September 10, 2012 for a monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00. The tenancy ended on May 21, 2013.

The tenant acknowledges receiving a cheque in the amount of \$69.10 from the landlord on May 29, 2013 for a portion of the security deposit. The landlord submits that they had suffered a loss of rent because the tenant had failed to move out her possessions in time for the new tenant to move in and they had to compensate the new tenant.

The parties acknowledge that when the tenancy began a move in condition inspection was completed on September 5, 2012 and that the landlord provided a copy of the Condition Inspection Report to the tenant on October 29, 2012. The landlord testified

he may have provided a copy earlier to her but he did not have any documentary evidence to confirm that.

The tenant provided documentary evidence confirming that on May 27, 2013 the landlord received her email dated May 24, 2013 containing her forwarding address.

Analysis

Section 23 of the *Act* requires a landlord and tenant to inspect the rental unit on the day the tenant is entitled to possession of the unit. The Section goes to state that it is the landlord's obligation to set the time of the inspection and complete a Condition Inspection Report and provide a copy of that Report to the tenants.

Section 24 stipulates that the landlord extinguishes her right to claim against a security deposit if the landlord does not provide the tenants with at least 2 opportunities to complete a move in inspection; or does provide the opportunity but then does not participate in the inspection; or does not complete the Condition Inspection Report and give a copy to the tenants. Residential Tenancy Regulation Section 18 stipulates that the Condition Inspection Report must be provided to the tenant within 7 days of the inspection.

I am satisfied from the testimony and evidence of both parties that the inspection was completed on September 5, 2012 and that the landlord provided a copy of the report on October 29, 2012 or 54 days after the inspection. As such, I find the landlord has extinguished their right to claim the deposit and must return the entire deposit to the tenant.

Further, Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit in full or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

While I accept the tenant received a portion of the security deposit back on May 29, 2013 I find the landlord failed to return the deposit in full or file an Application for Dispute Resolution claiming against the deposit. Therefore, I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to return of double the deposit pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,030.90** comprised of \$1,100.00 double the security deposit less the \$69.10 already returned to the tenant.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 07, 2013

Residential Tenancy Branch

