



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAHL REALTY & PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit and pet damage 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 *Residential Tenancy Act* (the "Act"), by the Landlord?

Background and Evidence

The Tenants paid the Landlord a security deposit of \$725.00 and a pet damage deposit of \$725.00 on or about September 1, 2012 (jointly referred to as the "Deposits"). I note that no interest is payable on deposits received since 2009. The Tenants vacated the premises at the end of August 2013.

The Tenants provided the Landlord with a verbal notice of the forwarding address to return the Deposits to at the end of the tenancy at the time of the outgoing condition inspection report. This verbal notice by itself would not have complied with the Act;

however, the Tenants also personally delivered a copy of their forwarding address to the Agent for the Landlord on September 19, 2013. In evidence the Tenants provided a copy of the letter. A third party signed the letter indicating he had witnessed the service of the letter with the forwarding address at the Agent for the Landlord's address on September 19, 2013. The Agent for the Landlord agreed she had the forwarding address for the Tenants when she went to see them on October 28, 2013.

At the end of the tenancy the Tenants agreed the Landlord could keep **\$491.20** from the Deposits to pay for outstanding utility bills of the Tenants at the rental unit.

The Landlord returned **\$767.74** to the Tenants but withheld \$191.06 from the Deposits.

The Agent for the Landlord testified that not all the utility bills had arrived by the end of the tenancy. The amount the Agents retained was based on estimates of the utility bills. The Agent testified that the Tenants did come into the office to pay the utility bills, but they came in early and the bills still had not arrived. The Agent testified that in October of 2013 they offered to pay the Tenants a lesser amount than what they claimed in this Application and to repay the filing fee for the Application; however, the Tenants did not agree with the amount to be deducted.

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.

Under section 38 to the Act, the Landlord was required to apply for arbitration to keep any portion of the Deposits the Tenants did not agree the Landlord could keep, and that Application should have been made within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants. The Landlord had made no such Application.

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 with the written agreement of the

Tenants. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit and the Tenants did not agree to all the amounts the Landlord wished to withhold.

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 **\$432.12**, comprised of double the balance of the Deposits due to the Tenants (2 x \$191.06) 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.

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: December 03, 2013

Residential Tenancy Branch

