



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application by the Tenant for a monetary order for return of double the security deposit paid to the Landlord and for the return of the filing fee for the Application.

Only the Tenant appeared at the hearing. The Tenant provided affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that they served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on August 26, 2013, and deemed received under the Act five days later. The Tenant testified she sent this to the address for service indicated in the written tenancy agreement. The Tenant testified that the tracking information supplied by the post office indicated the registered mail was not claimed by the Landlord and it was returned to the Tenant. I note that neglect or refusal to accept registered mail is not a ground for review under the Act. I find the Landlord has been duly served in accordance with the Act.

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?

Background and Evidence

The Tenant paid the Landlord a security deposit of \$550.00 on or about December 16, 2012. I note the Landlord required a security deposit equivalent to a full month of rent under the tenancy agreement.

The Tenant vacated the premises on January 23, 2013. The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it in the mail to the Landlord on or about February 1, 2013. The Tenant testified her mother also gave the Landlord a copy of this letter in person, at the end of the tenancy. In evidence the Tenants provided a copy of the letter.

The Tenant did not sign over a portion of the security deposit.

The Tenant testified that the Landlord did perform an incoming condition inspection report although no outgoing condition inspection report was done.

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 and paragraph 4 of the tenancy agreement, with regard to the security deposit. I also find the Landlord breached section 19 of the Act by requiring a security deposit in excess of $\frac{1}{2}$ of one month of rent payable under the tenancy agreement.

There was no evidence to show that the Tenant had agreed in writing which conforms to the requirements of the Act, 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. Therefore, I must order double the deposit to be returned.

By failing to perform the outgoing condition inspection report in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for any 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 Tenant 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 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.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,150.00**, comprised of double the security deposit (2 x \$550.00) and the \$50.00 fee for filing this Application.

Conclusion

The Landlord has breached the Act and tenancy agreement. Under section 38, I must order the return of double the security deposit and the filing fee for the Application to the Tenant.

The Tenant is granted 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 02, 2013

Residential Tenancy Branch

