



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant seeking the return of double the security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to the return of double the security deposit?

Background and Evidence

Both parties agree to the following:

The tenancy began on or about July 15, 2012 and ended on August 31, 2013. Rent in the amount of \$800.00 is payable in advance on the fifteenth day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$400.00. A condition inspection report in accordance with the Act was not conducted at move in or move out.

The tenant gave the following testimony:

The tenant stated that he provided his forwarding address in writing on September 3, 2013. The tenant is seeking the return of double the deposit.

The landlord gave the following testimony:

The landlord stated that the tenant did not provide proper notice in writing that he would be moving out. The landlord stated that she retained the security deposit to cover some of the loss of revenue she incurred due to the improper notice.

Analysis

The relationship between these two parties is an acrimonious one. The level of hostility and mistrust was very apparent. The parties made numerous attempts to resolve the matter during the hearing. In fact, the majority of the hearing was spent by the parties negotiating a settlement however the discussions would consistently break down with one party accusing the other of not being truthful. The parties were unable to reach a settlement. It was explained that this decision would only address the application before me. Both parties indicated that they understood.

In the landlords own tenancy agreement it states that a move in and move out condition inspection report must be conducted or the landlord will lose their right to make a claim for the deposit. The landlord stated that she wasn't aware of the obligation at the time of the tenancy but is aware now. The landlord also acknowledged the receipt of the tenants forwarding address in writing. The landlord stated that there are issues to be addressed in regards to loss of revenue. It was explained in great detail to the landlord that she was at liberty to file a separate application for dispute resolution if she and the tenant were unable to resolve the issues. The landlord stated that she understood and advised the tenant that she would be making an application for lost revenue.

Section 38 of the Act addresses the issue before me as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet*

start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant is entitled to the return of double the security deposit.

As for the monetary order, I find that the tenant has established a claim for \$800.00. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant an order under section 67 for the balance due of \$850.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$850.00.

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: January 15, 2014

Residential Tenancy Branch

