



Dispute Resolution Services

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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 Landlords 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 Landlords?

Background and Evidence

The Tenant paid the Landlords a security deposit of \$400.00 on or about April 1, 2012. The Tenant vacated the premises on September 1, 2013. The Tenant acknowledged he had not given the required Notice to End Tenancy to the Landlords; however, the Tenant testified he paid them for September due to the short notice.

The Tenant provided the Landlords with a written notice of the forwarding address to return the security deposit to, by providing it to the Landlords on or about August 24, 2013. The Tenant did not sign over a portion of the security deposit.

The Tenant testified that the Landlords did not perform an incoming condition inspection report. The Tenants further testified that the Landlords did not schedule an outgoing condition inspection report.

In reply, the appearing Landlord testified she returned \$235.00 to the Tenant in October of 2013, using the address he provided. The Landlord testified that the Tenant left the rental unit in an unsatisfactory state. The Landlord testified she was flabbergasted by the uncleanliness of the rental unit when she inspected it after the Tenant vacated.

The Landlord testified she and another person cleaned the rental unit and the Landlord felt it was fair that she deduct the cost of cleaning the rental unit from the deposit. The Landlord provided a copy of the receipt showing payment to the third party for cleaning at the rental unit.

The Tenant acknowledged receipt of the cheque for \$235.00 from the Landlords. The Tenant testified he had cashed the cheque.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords have breached section 38 of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlords could retain any portion of the security deposit.

There was also no evidence to show that the Landlords 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.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlords extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

Therefore, I find the Landlords have breached section 38 of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlords. At no time do the Landlords have the ability to simply keep the security deposit because they feel they are entitled to it, or are justified to keep it, or it is fair to keep it.

The Landlords 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 Landlords did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlords are 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 Landlords pay the Tenant the sum of **\$615.00**, comprised of double the security deposit (2 x \$400.00) and the \$50.00 fee for filing this Application, *less the \$235.00 already returned to the Tenant.*

Conclusion

The Tenant is given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords 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: January 13, 2014

Residential Tenancy Branch

