



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit, the interest and the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on November 25, 2013, and the landlord acknowledged that they received the application by filing evidence for this hearing, the landlord did not appear.

I find that the landlord has been duly served in accordance with the Act.

The tenant appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

The tenants paid a security deposit of \$500.00 and a pet damage deposit of \$500.00. The tenant vacated the premises on September 31, 2013. The tenants provided the landlord with a written notice of the forwarding address on October 7, 2013, by email requesting the return of the deposits and in that email they agreed that the landlord could retain the amount of \$200.00, from the deposits. The tenant stated the landlord received the email as they were several email threads after that request. Filed in evidence are email threads.

The tenant stated that they have not received any portion of their deposit from the landlord.

The landlord's written submission, in part reads,

"There was damage to every room in the building...In addition to all of the damages there is \$700 in missing rent that the tenants agree went missing... It is my contention that the purpose of the deposit is to protect the landlord against unreasonable damages to a rental premise. As there was extensive damage to the unit far exceeding the deposit amounts, I did not return the deposits."

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

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.

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 and pet damage deposit are held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the deposits 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. 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 or pet damage deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Conclusion

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 **\$1,800.00**, comprised of double the pet damage deposit (\$500.00), double the security deposit (\$500.00) less the amount the tenants authorized the landlord to retain (\$200.00). ($\$2,000.00 - \$200.00 = \$1,800.00$)

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 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: March 11, 2014

