



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 was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (*The Act*), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlords attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover the security deposit?

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy originally started on December 01, 2019. A new tenancy agreement was entered into on October 01, 2011 for a fixed term tenancy of

one year. The tenancy then reverted to a month to month tenancy. Rent for this unit was \$1,000.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$500.00 on November 30, 2009.

The tenant testifies that the landlord has failed to return the security deposit within 15 days of receiving the tenants forwarding address in writing. The tenant testifies that the forwarding address was provided to the landlord on December 09, 2013. The tenant has provided a copy of the letter containing the tenants forwarding address in evidence. The tenant therefore seeks to recover double the security deposit from the landlord. The tenant testifies that the landlord was not given written permission to keep all or part of the security deposit. The tenant testifies that the landlord failed to provide opportunity for the tenant to attend a move out condition inspection of the unit at the end of the tenancy. The tenant testifies that at the end of the tenancy the landlord was in the unit and the landlords only complaint was about some dents left in the carpet from the tenant's bookcase which had been on the carpet for four years.

The landlord agrees that they did receive the tenants notice to end the tenancy and the tenants forwarding address in writing. The landlord testifies that the tenant had agreed to forfeit the security deposit at the start of the tenancy to cover any damages. The landlord testifies that there were damages found in the unit and the landlord then kept the security deposit. The landlord agrees that no move out condition inspection was conducted with the tenant. The landlord testifies that at the end of the tenancy the tenant became belligerent and so the landlord decided not to do the inspection with the tenant.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do

either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 35(3) of the *Act* require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. The landlord must arrange the inspection with the tenant on the last day of the tenancy or on another mutually agreed day before new tenants move into the rental unit. In failing to complete the condition inspection when the tenant moved out, I find the landlord contravened s. 35(3) of the *Act*. Consequently, s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

If the landlord has included a term in either the tenancy agreement or the move in condition inspection report stating that the tenant agrees the landlord may keep the security deposit at the end of the tenancy if the landlord determines that damages were done in the unit; any such term would be considered to be an unconscionable term and therefore would not be enforceable as it is contrary to the *Act*

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing. Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on December 09, 2013. As a result, the landlord had until December 24, 2013 to return all of the tenant's security deposit. As the landlord failed to do so, the tenant has established a claim for the return of double the security deposit to an amount of **\$1,000.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

The tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,050.00**. The order must be served on the Respondent and is enforceable through the Provincial Court 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: April 15, 2014

Residential Tenancy Branch

