



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application by the Tenant for a monetary order for return of double the security deposit and to recover the filing fee for the Application.

Both parties appeared, gave 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 oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described 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 Landlord?

Background and Evidence

The parties entered into a written month to month tenancy agreement which began on March 1, 2013. The parties used a standard form tenancy agreement. The Tenant paid a security deposit of \$375.00 and a pet damage deposit of \$100.00 on or about March 3, 2013 (the "deposits"), and the monthly rent was agreed upon at \$800.00

The Tenant testified she vacated the premises on or about the end of December 2013. She testified she had her cousin live in the rental unit until the end of January 2014.

The Tenant testified she served the Landlord with her forwarding address by sending it to them by mail on or about January 20, 2014.

The Tenant testified she did not sign over a portion of the deposits to the Landlord.

Both parties agreed that there were no incoming or outgoing condition inspection reports performed. The Landlord argued the Tenant did not participate in one of these;

however, there was no evidence the Landlord had issued notices to conduct the condition inspection report in accordance with the Act or regulations.

The Landlord agrees they received the forwarding address of the Tenant on or about January 30, 2014.

The Landlord alleges that the Tenant did not give the required Notice to End Tenancy. The Landlord testified that the Tenant did not have written permission to sublet the rental unit. The Landlord further testified there were damages done to the rental unit by the Tenant. The Landlord further testified that the Tenant did not pay all the rent for December 2013.

The Landlord has not filed a claim to recover the alleged damages to the rental unit by the Tenant or for loss of rent. According to the Landlord they called the Branch and the information they allegedly received was that they did not have to file a claim and could keep the deposits.

The parties agreed the Landlord returned \$225.00 of the deposits to the Tenant.

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 of section 4 of the tenancy agreement.

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

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 deposits. Section 38 of the Act and section 4 of the tenancy agreement used by the Landlord set out these obligations.

By failing to perform incoming or outgoing condition inspection reports the Landlord extinguished their right to claim against the deposits, pursuant to sections 24(2) and 36(2) of the Act.

The Landlord has breached section 38 of the Act and section 4 of the tenancy agreement. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The deposits are held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the deposits through the authority of the Act. The Landlord is not able to keep any portion of the deposits because they feel they are entitled to it or, in their opinion, the Tenant breached the Act or tenancy agreement. Only an Arbitrator under the Act may make such a determination upon an application made by the

Landlord. That is why section 38 of the Act requires the Landlord to either apply to keep the deposits, or to return the deposits to the Tenant, within the time limits set out.

The Landlord is unable to unilaterally decide they can keep any portion of the deposits. As explained to the Landlord during the hearing, they may still make a claim for alleged damages or alleged unpaid rent; however, the issue of the deposits has been dealt with now in the Tenant's Application.

Here I find that the Landlord did not have authority under the Act to keep any portion of the deposits. I further find the Tenant is entitled to recover the filing fee for the Application.

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 **\$775.00**, calculated as follows: (2 x \$475.00 = \$950.00) \$950.00 plus the \$50.00 filing fee for the Application = \$1,000.00, **less** the \$225.00 already paid by the Landlord resulting in a balance of **\$775.00** due to the Tenant.

Conclusion

The Landlord breached the Act and tenancy agreement. The Tenant is entitled to recover double the security deposit and the filing fee for the Application, less the amount paid to the Tenant by the Landlord.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. This 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, unless 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 Act.

Dated: June 05, 2014

Residential Tenancy Branch

