



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Watermark at Southpointe Holdings Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MND, MNSD, FF
Tenant: MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the tenant only.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail.

Based on the testimony of the tenant and the fact that the landlord had also filed an Application for Dispute Resolution for their own claim that was scheduled for this hearing, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

It must also be decided are if the tenant is entitled to a monetary order for return of double the amount of the security deposit; and for losses incurred in placing stop payments on post dated cheques and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on July 16, 2013 for an 11 month fixed term tenancy agreement beginning on July 15, 2013 for a monthly rent of \$1,300.00 due on the 1st of each month with a security deposit of \$650.00 and a pet damage deposit of \$650.00 paid. The tenancy ended on March 24, 2014 when the tenant returned possession of the rental unit to the landlord.

The tenant submits that a move in condition inspection was not completed. I note that the landlord did not submit into evidence a copy of a Condition Inspection Report recording either the move in or the move out condition of the rental unit.

The tenant submits that she provided her forwarding address to the landlord on March 26, 2014 by email and on March 31, 2014 by courier.

The tenant also submits that the landlord had 4 post dated cheques that they did not return at the end of the tenancy and so she had to place stop payments on these cheques. The tenant has submitted a fee schedule from a bank indicating the fee for stop payments is \$12.50. The tenant testified that she placed a stop payment on one of the cheques and then closed her account.

Analysis

As the landlord failed to attend this hearing and present their claim, I dismiss their Application for Dispute Resolution in its entirety without leave to reapply.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 23 of the *Act* requires a landlord and tenant to inspect the rental unit on the day the tenant is entitled to possession of the unit. The Section goes to state that it is the landlord's obligation to set the time of the inspection and complete a Condition Inspection Report and provide a copy of that Report to the tenants.

Section 24 stipulates that the landlord extinguishes their right to claim against a security deposit for damage to the rental unit if the landlord does not provide the tenant with at least 2 opportunities to complete a move in inspection; or does provide the opportunity but then does not participate in the inspection; or does not complete the Condition Inspection Report and give a copy to the tenants.

As the landlord failed to complete a move in condition inspection or a condition inspection report I find the landlord has extinguished their right to claim against the deposit.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the tenant provided her forwarding address by March 26, 2014 and the tenancy ended on March 24, 2014 I find the landlord was required to either return the security deposit to the tenant or file their Application for Dispute Resolution claiming against the deposit for any rent owed only no later than April 10, 2014.

I note the landlord's Application for Dispute Resolution for compensation for damage to the rental unit only was submitted on April 9, 2014, however, I find that the landlord's failure to attend this hearing has the same effect as the landlord failing to apply to claim against the deposit.

I also find that as the landlord has extinguished their right to claim against the deposit for any damage to the rental unit they had no right to continue to hold the deposit and should have returned it to the tenant within 15 days of receipt of her forwarding address.

As a result, I find the tenant is entitled to double the amount of the security deposit, pursuant to Section 38(6).

Section 5(4) of the Residential Tenancy Regulation Schedule requires the landlord to return any post-dated cheques held by the landlord to the tenant prior to the final day of the tenancy.

As to the tenant's claim for compensation for the cost of 4 stop payments I accept the tenant's undisputed testimony that she placed a stop payment on one of her post dated

cheques in the amount of \$12.50 as a direct result of the landlords' failure to return her post dated cheques.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,662.50** comprised of \$2,600.00 double the security deposit; \$12.50 stop payment charges and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: August 05, 2014

Residential Tenancy Branch

