



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AT EASE RPMA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlord, for the return of rent paid, 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 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.

Preliminary Issue

The Tenants abandoned their claim for return of rent during the hearing. Therefore, the only issue before me was the return of the security deposit.

Issue(s) to be Decided

Has there been a breach of section 38 of the Act by the Landlord, entitling the Tenants to double the security deposit?

Background and Evidence

The Tenants paid the Landlord a security deposit of \$500.00 on or about August 29, 2013.

The Tenants vacated the premises on February 16, 2014.

The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it registered mail to the Landlord on or about February 15, 2014.

The Tenant testified that tracking information showed the mail was signed for by or on behalf of the Landlord on February 17, 2014.

The Tenants did not sign over a portion of the security deposit.

The Tenant testified that the Landlord did not perform an incoming condition inspection report.

The Agents for the Landlord acknowledged the above was accurate. The Agents testified they thought they could keep the security deposit, as they felt the Tenants owed them money. The Landlord submitted evidence in an attempt to counter claim for their alleged losses, through the Application of the Tenants.

The Landlord made no Application for Dispute Resolution to keep the deposit and did not return it.

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 no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

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 Tenants, to retain a portion of the security deposit, as required under section 38.

By failing to perform an incoming condition inspection report in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) of the Act.

Therefore, I find 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 is held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or think they are justified in keeping it.

If the Landlord and the Tenants are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims.

The Landlord may not make a monetary claim through the Tenants' Application. The Landlord has to file its own Application to keep the deposit with the 15 days of certain events as explained above. The Landlord may still file an application for alleged rent and alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

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, or with the written agreement of the Tenants. 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.

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 **\$1,050.00**, comprised of double the security deposit (2 x \$500.00) and the \$50.00 fee for filing this Application.

Conclusion

The Landlord has breached section 38 of the Act, by failing to return the deposit or claim against it with the 15 days provided under the Act.

The Tenants are awarded double the security deposit and the filing fee, in the amount of \$1,050.00

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 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: July 04, 2014

Residential Tenancy Branch

