



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application by the Tenant for a monetary order for return of double the security deposit paid to the Landlord 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 evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

Background and Evidence

The Tenant testified that when she moved into the rental unit the Landlord required her to pay the sum of \$2,500.00, as a security deposit, which was equivalent to two months of rent. The Tenant testified that she is an international student and the Landlord appears to be taking advantage of her and other students who rent his property, as she now knows the Landlord may only charge one half of a months' rent for a security deposit.

The Tenant testified that the Landlord told her and her ex-boyfriend when they moved into the rental unit to pay \$2,500.00 to the renter moving out, to refund that renter his

security deposit. The Tenant alleges the Landlord said he would keep the \$2,500.00 from the first renter as the security deposit for her and her ex-boyfriend. The Tenant alleges the Landlord has a pattern of doing this with international students.

The Tenant testified she left the rental unit in March of 2014. The Tenant testified that she gave the Landlord her forwarding address to return the deposit to in May of 2014, by registered mail.

The Tenant testified the Landlord replied to this forwarding address with a list of photographs and charges the Landlord claimed against her and her ex-boyfriend. The Landlord was claiming in these documents that the Tenant owed him money for repairs.

In evidence the Tenant provided several documents, including a reference letter given to her and signed by the Landlord. The reference letter is dated March 22, 2013, and the Landlord writes that the Tenant has lived in the rental unit since August of 2010.

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

The Tenant testified that the Landlord has not returned the security deposit to her, and she claims for \$5,000.00 for return of double the security deposit pursuant to section 38 of the Act.

In reply to the Tenant's claim, the Landlord testified that the Tenant never paid him a security deposit.

The Landlord testified that the Tenant had only lived in the rental unit for a month or so.

The Landlord then further testified that the Tenant was never a tenant by herself as she had moved into the rental unit with her ex-boyfriend. He then testified that she paid him rent every month and that her ex-boyfriend had left the rental unit early.

The Landlord testified that he had a written tenancy agreement with the Tenant and her ex-boyfriend which would show no security deposit had been paid, but the tenancy agreement had been destroyed in a fire in March of 2011.

The Landlord then again testified he had not received a security deposit from this 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 the Act.

I found there were significant credibility issues with the Landlord's testimony and evidence. For example, the Landlord claimed the Tenant was only in the rental unit for a month or two, yet this was contradicted by his own reference letter and even his own testimony at different times during the hearing. His letter is clear that the Tenant was in the rental unit for more than two years by March of 2013, and the Tenant's evidence is that she was in there until March of 2014.

I further found the Landlord to be equivocal in many of his answers to questions. For example he continued to say that the Tenant never paid him a security deposit, yet he did not deny the Tenant's testimony that he had told her to pay the security deposit to the outgoing renter and he would hold that \$2,500.00 as her and her ex-boyfriends' security deposit. For these reasons, where there is a conflict between the evidence, I accept the testimony and evidence of the Tenant over that of the Landlord.

I find there was no evidence to show that the Tenant 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 Tenant, to retain a portion of the security deposit, as required under section 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. In other words, the Landlord has no right to keep the security deposit or to claim against it.

Nevertheless, the Landlord is attempting to get the Tenant to pay more than \$6,000.00 for alleged and unproven damages and is attempting to charge the Tenant interest on this outstanding amount, as evidenced in the documents he submitted in evidence.

I note the Landlord has not obtained a Decision and consequently has no monetary order requiring the Tenant to pay him anything for these alleged damages.

The Landlord may still make such a claim by filing his own Application for Dispute Resolution, but he cannot unilaterally charge the Tenant anything for his alleged

damages, unless the Tenant agrees to this in writing. The Tenant testified she did not agree to these alleged damages or to let the Landlord keep the security deposit.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies under the Act. I found the demeanour of the Landlord during the hearing was such that he had little or no understanding of his obligations or rights under the Act.

For these reasons, I find the Landlord has breached section 38 of the Act.

The security deposit is held in trust for the Tenant 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 are justified to keep it. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made from 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, or that they can claim for damages and interest, based on unproven claims.

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 Tenant.

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.

As noted above, the Landlord submitted evidence about the condition of the rental unit after the Tenant left; however, the Landlord is unable to make a monetary claim through the Tenant's Application. The Landlord has to file his own Application to keep the deposit within the 15 days of the tenancy ending or the receipt of the forwarding address of the Tenant, as explained above.

The Landlord may still file an application for these alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

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 **\$5,050.00**, comprised of double the security deposit (2 x \$2,500.00) and the \$50.00 fee for filing this Application.

Conclusion

The Landlord breached section 38 of the Act. The Tenant is entitled to double the security deposit and the filing fee for the Application in the amount of \$5,050.00, under sections 38 and 67.

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.

Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court by the Tenant 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: October 31, 2014.

Residential Tenancy Branch

