



Dispute Resolution Services

Page: 1

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.

Preliminary Matters

At the outset of the hearing, the Tenant testified that she had not received the Landlord's evidence. The Landlord testified he had sent the evidence to the place of work of the Tenant. The Tenant testified that she had received a partial return of the security deposit at her place of work but not the evidence of the Landlord.

The Landlord testified that the Tenant had given him verbal permission to send the evidence to her place of work. The Tenant denied this.

I find the Landlord failed to provide sufficient evidence that he served the Tenant with his evidence in accordance with the Act, and therefore, I do not accept the documentary evidence of the Landlord. Despite this, the Landlord testified and made submissions during the hearing regard his evidence.

Issue(s) to be Decided

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

Background and Evidence

The Tenant paid the Landlord a security deposit of \$775.00 on February 1, 2012. At the outset of the tenancy, the parties had entered into a written, two year fixed term tenancy agreement. The Tenant vacated the premises on August 30, 2014.

The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to, by giving it to the Landlord on September 1, 2014. There was no evidence that the Tenant signed over a portion of the security deposit in writing in accordance with the Act.

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

The Landlord replied that he did do an incoming condition inspection report, although as the rental unit was brand new, he simply put a large bracket on the report indicating it was brand new. The Landlord did not perform an outgoing condition inspection report.

The Landlord testified he had wanted the Tenant to use the Landlord's preferred carpet cleaner and he put this in the tenancy agreement.

The Tenant thought that the amount of \$300.00 for carpet cleaning by the Landlord's preferred cleaner was too much and wanted to use her preferred carpet cleaning company. However, during the course of the hearing the Tenant testified that she did agree to pay the Landlord \$150.00 toward the carpet cleaning, as they had agreed to "split the difference", as explained by the Landlord.

Both parties agreed that the Landlord had given the Tenant a cheque for \$526.47 as a partial refund of the \$775.00 security deposit.

The Landlord claimed the Tenant had left the rental unit unclean and damaged. He testified he waived a lease breaking fee. He testified that he had not filed an Application to claim against the deposit because he did not like confrontations. He testified he had been a Landlord for many years and had never had a problem with the security deposit before. He also testified that he thought the Tenant had been a great Tenant and had always remarked to her how well she kept the rental unit. He explained he was disappointed in the condition she left the rental unit.

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 Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. However, I find the Tenant agreed to pay the Landlord \$150.00 toward the carpet cleaning.

The Landlord acknowledged he had not applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain any portion of the security deposit, as required under section 38.

While the Landlord may have performed an incoming condition inspection report, by failing to perform the outgoing 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) and 36(2) 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.

Therefore, 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 believe they are entitled to keep the deposit, 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.

While the Landlord did not have any authority under the Act to keep any portion of the security deposit, I find the Tenant agreed to pay the Landlord \$150.00 for carpet cleaning.

I note that even if the Landlord's submitted evidence about the condition of the rental unit after the Tenant left was accepted, the Landlord is unable to make a monetary claim through the Tenants' Application. The Landlord has to file their 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 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 **\$773.53**, comprised of the following:

- the security deposit of \$775.00 *less the \$150.00 agreed to by the Tenant*;
- double the balance of the remaining security deposit (2 x \$625.00 = \$1,250.00);
- \$1,250.00 *less the \$526.47 previously returned by the Landlord*;
- the balance of \$723.53, plus the \$50.00 fee for filing this Application; and
- consequently the total compensation payable to the Tenant is **\$773.53**.

Conclusion

I find the Landlord is in breach of section 38 of the Act. I find the Tenant is entitled to monetary compensation in the amount of **\$773.53** due to the Landlord's breach.

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 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: April 16, 2015

Residential Tenancy Branch

