



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 Tenants 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.

Only one of the Tenants appeared at the hearing. The Tenant provided affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified and supplied documentary evidence that they served the Landlord with the Notice of Hearing, Application for Dispute Resolution and evidence by registered mail, sent on September 27, 2014. However, the Tenants discovered they had an incorrect address for the mail to the Landlord, and the original mail was returned to them.

The Tenants found out the correct address and on November 27, 2014, they served the Landlord with the Notice of Hearing, Application for Dispute Resolution and evidence by registered mail. Under section 90 of the Act the mail was deemed received five days later. Furthermore, the Tenants did an online search and this indicates the mail was received by the Landlord on December 4, 2014. Therefore, I find the Landlord has been duly served in accordance with the Act.

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 parties entered into a written, one year fixed term tenancy agreement on or about August 7, 2013, for a tenancy to start on September 1, 2013. The Tenants paid the Landlord a security deposit of \$450.00, on or about August 7, 2013.

The Tenant testified that the Landlord did not perform an incoming or outgoing condition inspection report in accordance with the Act.

The Tenants vacated the rental unit on August 31, 2014. The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to by leaving a note at the rental unit.

The Tenants also supplied photocopies of text messages sent between them and the Landlord. One text message sent September 15, 2014, contained the forwarding address to return the deposit to. The Landlord replied to this text on September 16, 2014.

I find that the Landlord and the Tenants had established communications via text messaging and that the Tenant gave the Landlord the forwarding address in writing via text message on September 15, 2014.

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

The Tenant testified that the Landlord had not returned the security deposit to them.

Analysis

The Act contains comprehensive provisions on dealing with security deposits. Under section 38 to the Act, the Landlord is required to handle the security deposit as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[Reproduced as written.]

I also note that paragraph 4 of the standard form tenancy agreement used by the parties expresses this portion of the Act as well.

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 and the tenancy agreement.

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 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. 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 and paragraph 4 of the tenancy agreement.

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 are justified to keep it. If the Landlord and the Tenants 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 their 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 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.

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 **\$950.00**, comprised of double the security deposit (2 x \$450.00 = \$900.00) and the \$50.00 fee for filing this Application.

Conclusion

The Landlord breached section 38 of the Act and paragraph 4 of the tenancy agreement. The Tenants are entitled to return of double the security deposit and their filing fee for the Application, as explained above.

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: April 28, 2015

Residential Tenancy Branch

