



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 and pet damage deposit paid to the Landlord and for the return of the filing fee for the Application.

Only the Tenant 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 and Application for Dispute Resolution by registered mail, sent on October 17, 2014, and deemed received under the Act five days later. The Tenants' documentary evidence indicates the registered mail was not claimed by the Landlord and was returned to the Tenant. I note that neglect or refusal to accept registered mail is not a ground for review under the Act. 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 Tenant paid the Landlord a security deposit of \$600.00 and a pet damage deposit of \$600.00 in October of 2013 (the "Deposits"). The parties had a written tenancy agreement, although no copy of this document was supplied in evidence.

The Tenant vacated the premises on or about September 30, 2014, at the same time the Landlord had the new renters moving in.

The Tenant provided the Landlord with a written notice of the forwarding address to return the Deposits to, by posting it to the door of the Landlord's home in early October 2014. The Tenant testified that they sent the Landlord a text or email message with this forwarding address in early October as well. The Tenant also sent the Landlord the forwarding address by registered mail on or about October 17, 2014. The Tenant testified that the Landlord sent a cheque for a portion of the Deposits, but not all the Deposits, to this forwarding address. Based on the above and pursuant to section 71(2)(b) of the Act, I find the Landlord was sufficiently served with the forwarding address of the Tenant no later than October 23, 2014.

The Tenant testified that the Landlord did not perform a written incoming condition inspection report at the start of the tenancy. The Tenant further testified that the Landlord did not attend at the rental unit for the outgoing condition inspection report, but went there after the new renters had moved in.

According to the Tenant the Landlord alleged the rental unit was left dirty and a toilet was damaged, and the Landlord made her own deductions and returned **\$446.41** of the Deposits by cheque to the Tenant. The Tenant denied the rental unit was left dirty or that they damaged the toilet. The Tenant alleged the rental unit was left very clean and the toilet was damaged at the outset of the tenancy.

The Tenant explained that the next renters for the rental unit were moving in the same hour that the Tenant moved out. The Tenant testified that the Landlord was on vacation and did not go to the rental unit until four days after the new renters moved in.

Analysis

The Act contains comprehensive provisions on dealing with security deposits and pet damage deposits. Under section 38 to the Act, the Landlord was required to handle the Deposits 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 find the Landlord failed to return all or claim against the Deposits, in accordance with the Act.

I also find that the Landlord extinguished the right to claim against the Deposits by failing to perform a written condition inspection report at the start of the tenancy. This extinguishment is explained in section 24(2) as follows:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection]

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[Reproduced as written.]

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 Deposits.

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 Deposits, 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 Deposits for damages, pursuant to section 24(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 by failing to deal with the Deposits in accordance with the Act.

The Deposits were held in trust for the Tenant by the Landlord.

At no time does the Landlord have the ability to simply keep the Deposits because they feel they are entitled to them or are justified to keep them. If the Landlord and the Tenant are unable to agree to the repayment of the Deposits or to deductions to be made, 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 only keep all or a portion of the Deposits 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 Deposits. Therefore, I find that the Landlord is not entitled to retain any portion of the Deposits.

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 **\$2,003.59**, comprised of double the \$600.00 security deposit and the \$600.00 pet damage deposit ($2 \times \$1,200.00 = \$2,400.00$), **less the \$446.41 returned to the Tenant already** ($\$2,400.00 - \$446.41 = \$1,953.59$) and plus the \$50.00 fee for filing this Application ($\$1,953.59 + \$50.00 = \$2,003.59$).

Conclusion

The Landlord breached the Act by failing to return or claim against the security deposit and the pet damage deposit in accordance with the Act.

The Landlord is ordered to pay the Tenant double the security deposit and pet damage deposit, less the amount already returned to the Tenant, plus the filing fee for the Application.

The Tenant is given a formal Order in the above terms for **\$2,003.59**, 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: May 11, 2015

Residential Tenancy Branch

