



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 LandlordS 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.

Issues to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlords?
2. Are the Tenants entitled to return of the fee paid to file their application?

Background and Evidence

Introduced in evidence was a copy of the tenancy agreement indicating as follows: the fixed term tenancy began on May 1, 2014; the monthly rent was \$1,350.00 per month payable on the first of the month; and the Tenants paid a \$675.00 security deposit and a \$325.00 pet damage deposit by email money transfer.

T.L. testified on behalf of the Tenants. She stated that the tenancy ended on September 1, 2014. She acknowledged that the tenancy was for a fixed term and stated that she found tenants to rent the rental unit as of September 1, 2014, and that these new tenants paid \$1,500.00 per month, such that the Landlord received an additional \$150.00 per month.

The Tenants provided the Landlords with a written notice of the forwarding address to return the security deposit to, by sending it by email to the Landlords on September 1, and 5, 2014 as well

as by letter dated September 9, 2014. The September 9, 2014 letter was introduced in evidence by the Tenants.

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

The Tenants testified that the Landlords did not perform an incoming condition inspection report. The Landlords confirmed that they sent a blank condition inspection report to the Tenants for them to fill in, but that the Tenants never returned it.

The Tenants further testified that the Landlords did not attend at the rental unit for the outgoing condition inspection report.

The Landlord claimed they suffered a financial loss as a result of the Tenants breaking their fixed term tenancy. The Landlords confirmed that they did not make an application for dispute resolution.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of the Act.

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

There was also no evidence to show that the Landlords 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 Landlords extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenants by the Landlords. At no time do the Landlords 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 Landlords and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlords 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 Landlords feel they are entitled to keep the deposit, based on unproven claims. The Landlords 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 Landlords did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlords are not entitled to retain any portion of the security deposit.

I note that the Landlords submitted evidence about the condition of the rental unit after the Tenants left; however, the Landlords are unable to make a monetary claim through the Tenants' Application. The Landlords have to file their own Application to keep the deposit with the 15 days of certain events, as explained above.

The Landlords 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.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$2,050.00**, comprised of double the security deposit (2 x \$1,000.00) and the \$50.00 fee for filing this Application.

Conclusion

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: May 11, 2015

Residential Tenancy Branch

