



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 the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

While both parties provided testimony regarding the condition of the rental unit at the end of the tenancy this hearing was based on the tenant's Application for Dispute Resolution and not the landlord's seeking compensation for damage. As such, testimony of the condition of the unit is not relevant to the outcome of this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on November 1, 2013 as a month to month tenancy for the monthly rent of \$950.00 due on the 1st of each month with a security deposit of \$475.00 paid. The parties agree the tenancy ended on September 30, 2014.

The parties agreed the tenant provided the landlord with her forwarding address by text message on October 1, 2014.

The tenant submits that the landlord did not conduct a move in or a move out condition inspection. The landlord submits that they did complete a move in walkthrough but they did not complete a condition inspection report. The landlord also submits that they had offered the tenant to complete a move out inspection by text message.

Analysis

Section 23 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit on the day the tenant is entitled to possession of the unit or on another mutually agreed upon day. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 23(4) requires the landlord to complete a Condition Inspection Report with both the landlord and tenant signing the report. Pursuant to Section 18 of the Residential Tenancy Regulation the landlord must provide a copy of the Report to the tenant within 7 days after the inspection has been completed.

Section 24 of the *Act* states that the right of the landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord does not comply with the requirement to offer the tenant 2 opportunities to attend the inspection; if the landlord has provided 2 opportunities the landlord does not participate in the inspection; or complete the condition inspection report and give the tenant a copy as required under the Regulation.

Based on the landlord's testimony I find the landlord did not complete a condition inspection report and/or give a copy of such a report to the tenant. Therefore I find the landlord has extinguished their right to claim against or retain the security deposit.

Section 35 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon date. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 17 of the Residential Tenancy Regulation stipulates that the landlord must offer a first opportunity to schedule the condition inspection by proposing one or more dates and times. If the tenant is not available at the time proposed the tenant may propose another time that the landlord must consider. If the time proposed by the tenant is not acceptable the landlord must propose a second opportunity by providing the tenant a notice in the approved form. The approved form is available on the Residential Tenancy Branch website.

Based on the landlord's testimony I find the landlord did not propose a second opportunity in the approved form to complete a move out inspection. As such, I find the landlord has again extinguished their right to claim against or retain the security deposit.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the landlord had extinguished their right to claim against the deposit I find that the landlord is required to return the deposit to the tenant. Further, as the landlord received the tenant's forwarding address on October 1, 2014 I find that the landlord was required to return the deposit to the tenant no later than October 16, 2014.

As the landlord still retains the deposit I find the landlord has failed to comply with the requirements under Section 38(1) and the tenant is entitled to double the amount of the deposit pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,000.00** comprised of \$950.00 double security deposit and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision 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

