



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This is an application brought by the tenant requesting a monetary order be issued against the landlord in the amount of \$2850.00.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issues are whether or not the tenant has the right to an order for return of his security deposit and whether or not the tenant has established a claim for compensation in the equivalent of one month rent.

Background and Evidence

This tenancy began on June 5, 2009, and at that time a security deposit of \$1350.00 was transferred to this rental unit from the previous rental unit.

This tenancy ended on November 15, 2012, and the tenant applied for dispute resolution on November 13, 2014.

The landlord has admitted that she received a forwarding address in writing on April 23, 2013.

The tenant is requesting an Order for return of his full security deposit.

The landlord has argued that there were extensive damages to the rental unit and that the tenant had verbally agreed to allow them to keep the security deposit towards those damages, a claim that the tenant denies. The tenant states there were discussions about the security deposit but no final agreement was ever reached.

The landlord also argued that she believes the tenant's right to the return of the security deposit has been extinguished, because the tenant failed to participate in the moveout inspection.

The tenant stated that he also believes he should be given the equivalent of one month rent because he moved, due to the landlords written request, to allow the landlord to do repairs to the rental unit.

Both the tenant and the landlord agree that the tenant was never served with the proper section 49, two month Notice to End Tenancy for landlord use.

Analysis

Security deposit

The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord did not get the tenants written permission to keep any or all of the deposit, has not returned the tenants security deposit, or applied for dispute resolution to keep any or all of tenant's security deposit, and the time limit in which to apply is now past.

This tenancy ended on November 15, 2012 and the landlord had a forwarding address in writing by April 23, 2013 and it is my finding that the tenant's right to return of the deposit has not been extinguished.

The landlord argued that the tenant's right to the return of the security deposit had been extinguished because the tenant failed to participate in the moveout inspection; however the landlord also admitted that she never gave the tenant a second opportunity to do the moveout inspection which is a requirement of the Residential Tenancy Act.

Section 35(2) of the Residential Tenancy Act states:

35(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Further, Section 36(2) of the Residential Tenancy Act states:

36(2) Unless the tenant has abandoned the rental unit, the right of the 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 35 (2) [*2 opportunities for inspection*],

Therefore, since the tenant did not abandon the rental unit, it was the landlord's right to claim against the security deposit that was extinguished, and not the tenant's right to the return of the security deposit.

Therefore even though the tenant has not applied for double the security deposit, Section 38(6)(b) the Residential Tenancy Act requires that the landlord pay double the amount of the security deposit to the tenant.

The tenant paid a deposit of \$1350.00, and therefore the landlord must pay \$2700.00 to the tenant.

I also allow the request for recovery of the \$50.00 filing fee.

Compensation for move

I will not however allow the tenants claim for the equivalent of one month's rent as compensation, because the landlord never served the tenant with a Section 49 Notice to End Tenancy, and therefore the tenant was not required to vacate the rental unit. The compensation required under section 51 of the Residential Tenancy Act is only required if the tenant has been served with a section 49 Notice to End Tenancy.

Conclusion

I have issued an Order for the landlord to pay \$2750.00 to the tenant.

The remainder of the tenant's application is dismissed without leave to reapply.

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: June 01, 2015

Residential Tenancy Branch

