



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O, 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's agent and the landlords.

While the tenant's Application had named the tenant's agent I note that the agent was not a party to the tenancy. As such, I amend the tenant's Application to name only the tenant.

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 23, 24, 35, 36, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submits the tenancy began on September 1, 2012 as a month to month tenancy for the monthly rent of \$675.00 due on the 1st of each month with a security deposit of \$350.00 paid. The tenancy ended on April 30, 2015.

The parties agree the tenant left the landlord a note in the rental unit on April 30, 2015 providing her forwarding address and authorizing the landlord to withhold \$150.00 of the deposit. The landlords confirmed that they have not file an Application for Dispute Resolution seeking to claim against the deposit.

The parties agreed that at the time the tenant moved in the landlord's daughter met with the tenant and a walk through was completed. The tenant submits that a copy of the Condition Inspection Report was not provided to the tenant until May 2013 at her forwarding address after the tenancy had ended.

The landlord stated that the tenant was hard to get a hold of at the start of the tenancy and it was not until November when she could finally get the tenant to sign the tenancy agreement. The landlord did dispute that a copy of a Condition Inspection Report was not provided to the tenant at any point prior to November 2012.

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 testimony of both parties I am satisfied the landlord failed to provide the tenant with a copy of the move in Condition Inspection Report within 7 days after the inspection was completed. As such, I find the landlord has extinguished their right to claim against the 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.

Section 38(4)(a) of the *Act* states a landlord may retain an amount from a security deposit or a pet damage deposit if the tenant, at the end of the tenancy, agrees in writing the landlord may retain that amount to pay a liability or obligation of the tenant. Section 38(5) states that the landlord's right to retain an amount under Section 39(4)(a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against the security deposit has been extinguished under Section 24(2).

As I have determined that the landlord's right to claim against the deposit for damage was extinguished I find the landlord is not entitled to withhold any amount from the security deposit and it must be returned in full to the tenant.

Furthermore, to be compliant with the requirements of Section 38(1) the landlord was required to either return the deposit, in full, or to file a claim against the tenant within 15 days of the end of the tenancy and receipt of the tenants forwarding address or no later than May 15, 2013. As the landlord has not filed an Application claiming against the deposit and has not returned any amount of the deposit, I find 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 I grant a monetary order in the amount of **\$750.00** comprised of \$700.00 double the amount of the security deposit and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails 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: June 17, 2015

Residential Tenancy Branch

