



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened in response to an application by the Landlord for an Order to retain the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the "Act").

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to retain the security deposit?

Relevant Background and Evidence

The following are agreed facts: A written tenancy agreement was signed by the Parties on July 1, 2014. The tenancy started on July 1, 2014 and ended on February 28, 2014. Rent of \$1,250.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$625.00 as a security deposit. The Landlord made no offers to the Tenant to conduct a move-in condition inspection and none was done.

The Landlord claims retention of the security deposit for damages to the unit. The Tenant states that he wants return of double the security deposit.

Analysis

Section 23 of the Act provides that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. This section further provides that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 24 of the Act provides that 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 does not provide 2 opportunities to the Tenant for a move-in inspection. Based on the undisputed evidence that the Landlord failed to offer a move-in condition inspection, I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at the onset of the tenancy. I therefore dismiss the Landlord's application to retain the security deposit. The Landlord remains at liberty to make an application to claim for damages to the unit.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord's right to claim against the security deposit was extinguished, the only option for the Landlord was to return the security deposit in full. As the Landlord has not returned the security deposit I find that the Landlord must now return double the security deposit to the Tenant in the amount of **\$1,250.00** (\$625.00 x 2).

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$1,250.00**. If necessary, this order may be filed in the Small Claims Court and 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: August 28, 2015

Residential Tenancy Branch

