



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 an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlord 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.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord, entitling the Tenants to double the security deposit?

Background and Evidence

The Tenants paid the Landlord a security deposit of \$500.00 on or about June 1, 2010. I note that interest has not been payable on security deposits since 2009.

On February 21, 2015, the Tenants provided the Landlord with a written notice they were ending the tenancy as of March 31, 2015. In the written notice the Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to.

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

The appearing Tenant testified that the Landlord did not perform an incoming condition inspection report. The Tenant further testified that the Landlord did not attend at the rental unit for the outgoing condition inspection report.

The appearing Tenant testified that the Landlord had returned \$500.00 to them after they had filed the Application for Dispute Resolution. The Tenant testified that the letter from the Landlord with the cheque was postmarked April 21, 2015.

The Agent for the Landlord testified that she tried to meet the Tenants to get the key back at the end of the tenancy; however, the meeting had to be changed a few times. The Agent testified that she picked up the keys to the rental unit and then went to the rental unit by herself later. The Agent testified that the rental unit was left clean with no damage.

The Agent testified that she asked the Tenants to be patient about the return of the deposit, since she required two signatures on the cheque and one of the signatories was in the hospital. She testified they sent the security deposit back in an envelope but it was about a week earlier than the April 21, postmark, since the email was being sent through a rural post box.

The Tenant denied that he had been asked to be patient by the Agent. The Tenant stated he had told the Landlord of their rights to claim double the deposit and they were not waiving the right to the doubling of the deposit due to some alleged ill treatment his wife had experienced from one of the Landlords.

Analysis

The Act contains comprehensive provisions on dealing with security and pet damage deposits. Under section 38 to the Act, the Landlord is required to handle the security deposit as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[Reproduced as written.]

I note that the Landlord extinguished the right to claim against the security deposit or pet damage deposit by failing to perform a written condition inspection report at the start of the tenancy. In any event, the Agent for the Landlord testified the rental unit was left clean and undamaged.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of section 38 of the Act for the following reasons.

I find the tenancy ended on March 31, 2015.

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

There was also no evidence to show that the Landlord had applied for arbitration, within the later of 15 days from 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.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

Therefore, I find the Landlord has breached section 38 of the Act.

The security deposit is held in trust for the Tenants by the Landlord.

At no time does the Landlord 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 Landlord and the Tenants are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord 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.

The Landlord 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 Tenants. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit.

The Landlord should have acted sooner to get a second signature on the cheque, or repaid the Tenants in cash, prior to the 15th day time limit.

Therefore, I find that the Tenants are entitled to double the security deposit pursuant to section 38, as described above.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$550.00**, comprised of double the security deposit ($2 \times \$500.00 = \$1,000.00$) and the \$50.00 fee for filing this Application, less the \$500.00 the Tenants have already received..

Conclusion

The Landlord breached the Act and the Tenants are entitled to the statutory remedy of double the security deposit, pursuant to section 38 of the Act.

The Landlord is ordered to repay the Tenants **\$550.00**, comprised of double the security deposit plus the \$50.00 filing fee for the Application, less the \$500.00 the Tenants already received.

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: September 28, 2015

Residential Tenancy Branch

