



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover double the security deposit?

Background and Evidence

The parties agree that this tenancy started on September 01, 2013 for a fixed term period of a year; thereafter reverting to a month to month tenancy. Rent for this unit was \$1,700.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$850.00 on August 10, 2013.

The tenant testified that he had paid rent up to April 30, 2015 and the tenancy was to end on that day although the tenant did move his belongings out at the beginning of April. The tenant testified that he returned to the unit at approximately 6.00 a.m. on April 30, 2015 to do the final move out clean and have this completed by 1.00 p.m. and do a move out inspection with the landlord. When the tenant entered the unit he noticed shoes by the door, he went upstairs and saw the landlord and his wife in bed asleep. The tenant did not wait at the unit as the landlord had previously been intimidating and aggressive. The tenant testified that the landlord had a cleaning crew in the unit without the tenant's permission and the tenant was surprised that the landlord had done this as the tenant had until 1.00 p.m. on April 30, 2015 to complete the cleaning. The landlord also sent the tenant a letter stating he had used the security deposit for various things and the balance left over was used to repair scratches.

The tenant testifies that the landlord has failed to return the security deposit within 15 days of receiving the tenant's forwarding address in writing. The tenant testifies that the forwarding address was provided to the landlord on March 18, 2015 in the tenant's notice to end tenancy. The tenant has provided a copy of the notice containing his forwarding address in documentary evidence. The tenant testifies that the landlord was not given written permission to keep all or part of the security deposit. The landlord has not filed a claim to keep the security deposit and therefore the tenant seeks to recover double the security deposit to an amount of \$1,700.00

The landlord agreed that he did receive the tenant's forwarding address in writing in the notice to end the tenancy. The landlord referred to the addendum to the tenancy agreement which contains information about cleaning the unit at the end of the tenancy and failure to comply will result in the landlord hiring professionals to complete the terms and costs will be deducted from the tenant's damage deposit. The landlord testifies that there were damages and cleaning required in the unit and referred to his photographic evidence. Due to this the landlord kept the security deposit. The landlord testified that he was not aware he had to file an application to keep the security deposit within 15 days of the end of the tenancy.

The landlord agreed that he did not complete a move in or a move out condition inspection report at the start and end of the tenancy and only a walkthrough was done with the tenant at the start of the tenancy.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

If the landlord has included a term in the tenancy agreement or the addendum stating that the tenant agrees the landlord may keep the security deposit at the end of the tenancy, if the landlord determines that damages were done in the unit; I find any such term would be considered to be an unconscionable term and therefore would not be enforceable as it is contrary to the *Act*.

Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(c) and s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing. Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on March 18, 2015 and the tenancy ended on April 30, 2015. As a result, the landlord had until May 15, 2015 to return all of the tenant's security deposit. As the landlord failed to do so, the tenant has established a claim for the return of double the security deposit to an amount of **\$1,700.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

The tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to s. 38(6)(b) and s. 72(1) of the *Act* in the amount of **\$1,750.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: October 22, 2015

Residential Tenancy Branch

