



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.

Issues to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlord entitling the Tenant to return of double the security and pet damage deposits paid?
2. Should the Tenant recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which confirmed the Tenants paid the Landlord a security deposit of \$600.00 and a pet damage deposit of \$300.00 on or about March 1, 2014 (collectively referred to as the "Deposits").

The Tenants vacated the premises on February 28, 2015 after the expiration of the 1 year fixed term. The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it by mail to the Landlord on or about March 13, 2015 at 3:01 p.m. In evidence the Tenants provided a copy of the fax confirmation sheet. The Landlord confirmed receipt of the Tenants' forwarding address.

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

The Tenants testified that the Landlord did not perform an incoming or outgoing condition inspection report. The Landlord confirmed no such inspections or reports were completed.

The Landlord claimed the Tenants failed to pay half a months' rent, failed to pay a fine and had left the rental unit unclean. The Landlord stated that he retained the Deposits because the Tenants owed him money and he believed his monetary claim would be dealt with at the same time as the Tenants' claim for return of the Deposits.

Analysis

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

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

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the Deposits, as required under section 38.

The parties agreed that the incoming and outgoing inspection reports were not completed. By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished his right to claim against the Deposits for damages, pursuant to sections 24(2) and 36(2) of the Act.

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

The Deposits are held in trust for the Tenants by the Landlord. If the Landlord and the Tenants are unable to agree to the repayment of the Deposits 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 is not permitted to make this decision unilaterally.

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 Tenant. Here the Tenants did not agree to the Landlord retaining the deposits, nor did the Landlord have an Order from an Arbitrator authorizing him to keep any portion of the Deposits. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

I note that the Landlord testified about the condition of the rental unit after the Tenants left and money allegedly owed; however, the Landlord is unable to make a monetary claim through the Tenants' Application. As I noted during the hearing, the Landlord has to file his own Application.

The Landlord may still file an application for alleged rent and alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

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 **\$1,850.00**, comprised of double the Deposits (2 x \$900.00) and the \$50.00 fee for filing this Application.

The Tenants are given a formal Monetary 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.

Conclusion

The Landlord failed to perform incoming and outgoing condition inspection reports. The Landlord also failed to return the Deposits within 15 days of receipt of the Tenants' forwarding address or apply for dispute resolution as required by the *Act*. The Tenants are entitled to return of double the Deposits pursuant to section 38 as well as recovery of the filing fee for a total monetary award of **\$1,850.00**.

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: October 29, 2015

Residential Tenancy Branch

