



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 the security deposit paid to the Landlords and for the return of the filing fee for the Application. I note the Tenants have waived their claim toward double the security deposit in their written submissions and at the hearing. Their Application was made under the *Residential Tenancy Act* (the “Act”).

Only the Tenants appeared at the hearing. The Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants testified and supplied documentary evidence that they served the Landlords with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on June 19, 2015, and deemed received under the Act five days later. I note that neglect or refusal to accept registered mail is not a ground for review under the Act. I find the Landlords have been duly served in accordance with the Act.

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 Landlords?

Background and Evidence

The Tenants paid the Landlords a security deposit of \$600.00 on or about May 31, 2014. I note that interest is not payable on deposits paid in 2014. The Tenants vacated the premises on or about April 30, 2015.

The Tenants provided the Landlords with a written notice of the forwarding address to return the security deposit to, by sending it registered mail to the Landlords on or about May 25, 2015. In evidence the Tenants provided a copy of the registered mail receipt. The Tenants testified this mail was returned as the Landlords refused to accept the mail. I note that neglect or refusal to accept registered mail is not a ground for review under the Act. The Landlords were deemed served with the forwarding address five days later.

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

The Tenants testified that the Landlords did not perform an incoming or outgoing condition inspection report that complied with the Act.

Analysis

The Act contains comprehensive provisions on dealing with security and pet damage deposits. Under section 38 of the Act, the Landlords are 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 Landlords extinguished the right to claim against the security deposit by failing to perform a written condition inspection report at the start of the tenancy. This extinguishment is explained in section 24(2) as follows:

24 (2) 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

(a) does not comply with section 23 (3) [2 opportunities for inspection]

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[Reproduced as written.]

Based on the above, the undisputed testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of the Act.

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

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

In any event, by failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlords extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies.

Therefore, I find the Landlords have breached section 38 of the Act.

The security deposit is held in trust for the Tenants by the Landlords. At no time do the Landlords 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 Landlords and the Tenants are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlords 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.

It is not enough that the Landlords feel they are entitled to keep the deposit, based on unproven claims. The Landlords 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 Landlords did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlords are not entitled to retain any portion of the security deposit.

Lastly, I note the Tenants are entitled to double the security deposit here, pursuant to section 38 of the Act (see above). However, they waived the right to claim double in writing in their Application and orally at the hearing.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$650.00**, comprised of the security deposit and the \$50.00 fee for filing this Application.

Conclusion

The Landlords have breached section 38 of the Act. The Tenants waived the doubling of the deposit. The Tenant are awarded the return of the deposit and their filing fee for the Application.

The Tenants are given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible.

Should the Landlords 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: November 23, 2015

Residential Tenancy Branch

