



Dispute Resolution Services

Page: 1

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. The Application was made under the *Residential Tenancy Act* (the “Act”).

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.

Preliminary Issues

At the outset of the hearing the male Tenant explained that the other Tenant had passed away prior to the hearing. The Tenant who appeared at the hearing testified he was the executor of the estate. I refer to him as the Executor in this decision.

The Landlord argued that the Executor was never a tenant and that only the deceased Tenant was his renter. The Landlord testified there was no written tenancy agreement, but he had an oral agreement with the deceased Tenant. He testified that the rent was only ever paid by the deceased Tenant.

The Executor testified that he lived in the rental unit with his mother. The Executor argued he was a tenant.

The Landlord agreed that he had lived there, but the Landlord argued the Executor was not his tenant.

Therefore, I have amended the Application to name the estate of the deceased Tenant and have identified the male as the Executor of the estate, as I find he was acting in his capacity to represent the estate at the hearing.

I note that during the course of the hearing the Landlord had to be cautioned for interrupting the proceedings. I also note the Landlord acted in a rude and argumentative manner toward the end of the hearing, and the Landlord disconnected from the hearing just prior to it concluding.

Issue(s) to be Decided

Has there been a breach of section 38 of the Act by the Landlords?

Background and Evidence

The Executor testified that the Tenant paid the Landlord a security deposit of \$525.00 in April of 2014. The Tenant vacated the premises on May 27, 2015. At this time the forwarding address of the Tenant was provided in writing to the representative of the Landlord. There was also a copy of the forwarding address left in the rental unit and a text message sent to the Landlord. The Tenant did not sign over a portion of the security deposit. The Landlord did not file a claim against the security deposit. The Landlord acknowledged the above facts during the hearing.

The Executor testified that the Landlord did not perform an incoming or outgoing condition inspection report in writing.

The Landlord testified that he did a walkthrough at the beginning of the tenancy, but agreed nothing was done in writing. He testified that he showed only the deceased Tenant the rental unit. He did not know her son was going to live there.

The Landlord alleged the Tenant had left the rental unit carpets unclean and the lawn was damaged by the Tenant's dog. He testified that about six months into the tenancy the Tenant acquired a dog. He alleged that the ad he placed in a newspaper bulletin for the rental unit that the Tenant responded to stated that no pets were allowed.

The Landlord testified he had to clean the carpet twice due to the alleged smell and that cost him \$100.00. He testified he had to re-seed the yard due to the alleged damage of the dog.

The Landlord argued that his mother and him were not landlords, as the rental unit was not their sole source of income. He testified they have been renting the unit since 1968 or 1969, and have never used a written tenancy agreement, and everything had been done on a handshake.

The Landlord testified that when he found out the Tenant had passed away he thought that was the end of the matter and the Tenant's Application would not proceed. He wanted to submit evidence about the condition of the rental unit but did not do so because he did not think the matter was going ahead.

The Landlord further testified that no one notified him when the Act had changed, so he did not know the current laws about residential tenancies.

Analysis

The Act contains comprehensive provisions on dealing with security and pet damage deposits. Under section 38 to 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.**

[Emphasis added in bold.]

I further 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. 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.**

[Emphasis added in bold.]

Based on the above, the 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 Tenant 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 Tenant, to retain a portion of the security deposit, as required under section 38.

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) [reproduced above] and 36(2) of the Act.

For these reasons, I find the Landlords have breached section 38 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.

The security deposit is held in trust for the Tenant 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 Tenant were unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlords were required to file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. They did not do this.

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 I find 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 and pursuant to section 38 of the Act I must order them to repay double the deposit.

I note that the Landlord testified about the condition of the rental unit after the Tenant left; however, I explained to the Landlord several times during the hearing that the Landlords are unable to make a monetary claim through the Tenants' Application.

I explained that the Landlords may still file an Application for 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 Landlords pay the Tenant the sum of **\$1,100.00**, comprised of double the security deposit (2 x \$525.00) and the \$50.00 fee for filing this Application.

Conclusion

The Landlords have breached the Act by failing to deal with the security deposit in accordance with the Act. Under section 38 they are required to repay the Tenant double the deposit paid.

The Tenant is 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 24, 2015

Residential Tenancy Branch

