



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MDSD, FF

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested a Monetary Order for return of his security deposit and to recover the filing fee.

Only the Tenant appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified served the Landlord with the Notice of Hearing and his Application on July 27, 2015 by registered mail to the home in which the rental unit was located. He confirmed that this was the address the Landlord insisted the Tenant send all correspondence. The Tenant provided in evidence a copy of the registered mail receipt and the tracking number as confirmation of service by registered mail. The Tenant advised that the registered mail had been returned to him as "unclaimed". The Landlord cannot avoid service by failing or refusing to accept registered mail. Under the Act documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of August 2, 2015.

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.

Issues to be Decided

1. Is the Tenant entitled to return of the security deposit?
2. Should the tenant recover the filing fee?

Background and Evidence

The Tenant testified that he rented a room in a seven bedroom home from the Landlord who he advised was responsible for renting out the other six bedrooms to other renters. The Tenant stated that no written tenancy agreement existed. While the Landlord requested that all mail/correspondence be sent to the address in which the rental unit is located, the Tenant stated that the Landlord did not reside in the rental unit.

The Tenant testified that the tenancy began on September 1, 2014. Monthly rent was payable in the amount of \$450.00 and the Tenant paid a security deposit of \$225.00 on August 26, 2014 which the Landlord continues to hold.

The Tenant testified that the Landlord refused to provide receipts for payment of his security deposit. The Tenant further testified that he asked the Landlord several times for a receipt and the Landlord refused to provide them. Introduced in evidence by the Tenant was a copy of the Tenant's bank account activity at the relevant time and which shows the Tenant withdrew \$225.00 on August 25, 2014.

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

The Tenant also testified that he did not sign over any portion of his security deposit to the Landlord.

The tenancy ended on May 30, 2015. The Tenant testified that he provided the Landlord a piece of paper with his forwarding address in writing on May 30, 2015 when he was vacating the rental unit. The Tenant testified that as he gave the piece of paper to the Landlord he did not have a copy of the letter, but confirmed that at the time he handed it to the Landlord the Landlord put the letter on a "scratch pad/notebook" and put it in his pocket. The Tenant further testified that he requested return of his security deposit on numerous occasions by text message and the Landlord did not respond.

Analysis

Based on the above, the undisputed testimony of the Tenant and the evidence filed and on a balance of probabilities, I find as follows.

I accept the Tenant's undisputed testimony that he paid a security deposit in the amount of \$225.00. I am persuaded by his banking records, which were submitted in evidence, that he paid the \$225.00 in cash after withdrawing the funds from his bank account.

I further find that there was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

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 security deposit as required by the *Residential Tenancy Act*.

I accept the Tenant's evidence that the Landlord did not perform inspections as required. By failing to perform incoming or outgoing condition inspection reports the Landlord has extinguished his right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act. The Landlord has also breached section 38 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 security deposit is held in trust for the Tenant by the Landlord. 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. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue. Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$500.00**, comprised of double the pet damage deposit and security deposit (\$225.00) and the \$50.00 fee for filing this Application.

The Tenant is 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 (Small Claims Division) and enforced as an Order of that court.

Conclusion

The Landlord failed to conduct incoming or outgoing condition inspection reports as required by the *Residential Tenancy Act*. Pursuant to sections 38 and 67, the Tenant is

entitled to recover **\$500.00** from the Landlord representing double his security deposit and the filing fee.

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: December 10, 2015

Residential Tenancy Branch

