



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

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 her security deposit.

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

The Tenant testified she served the Landlord with the Notice of Hearing and her Application on August 13, 2015 by registered mail. Under the Act documents served this way are deemed served five days later. The Tenant also testified that she received a text message from the Landlord on August 18, 2015 wherein he confirmed he received the application. Accordingly, I find the Landlord was duly served as of August 18, 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.

Issue to be Decided

Is the Tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

The Tenant testified that the tenancy began in August of 2013. The Tenant stated that she paid a security deposit of \$600.00 the week before the tenancy began. The Tenant vacated the premises on May 31, 2015.

The Tenant testified that on the date she moved from the rental unit she left the Landlord a note with her forwarding address to return the security deposit to. She further testified that a short while later she returned to the community in which the rental unit was located and put a letter in the Landlord's mail box, again providing her forwarding address. She confirmed that she did not sign over a portion of the security deposit.

The testimony of the Tenant was that the Landlord did not perform neither incoming nor outgoing condition inspection reports.

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 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, plus interest.

By failing to perform incoming or outgoing condition inspection reports the Landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

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 the Tenant's written agreement or 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 \$1,200.00 comprised of double the security deposit (\$600.00).

The Tenant is given a formal Monetary Order in the above terms and must serve the Landlord 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 condition inspection reports as required by the Act and thereby extinguished his right to claim against the security deposit. The Landlord also failed to return the security deposit or make an application for authority to retain the funds. The Landlord is in breach of section 38 of the *Act*, thereby entitling the Tenant to \$1,200.00 which represents double the \$600.00 security deposit paid.

Dated: January 18, 2016

Residential Tenancy Branch

