



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 tenant for double recovery of the security deposit. The tenants and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenant entitled to double recovery of the security deposit?

Background and Evidence

The tenancy began on August 1, 2013. At the outset of the tenancy the tenants paid the landlord a security deposit of \$450.00. On November 30, 2014 the tenants gave their one-month notice to vacate. The tenancy ended on December 31, 2014.

Tenants' Evidence

The tenants stated that the landlord told them that he planned to renovate the unit after they moved out. The tenants stated that on December 31, 2014 they returned the keys and the landlord told them that he was going to "rip the place apart" the next day. The tenants stated that on January 1, 2015 they emailed the landlord to ask if there would be a move-out inspection if the unit was being renovated. The tenants provided evidence that they first gave the landlord their written forwarding address in their notice to vacate dated November 30, 2014, and then a second time by registered mail sent

January 20, 2015. The tenants stated that they received a cheque from the landlord for \$450.00 on February 16, 2015.

The tenants submitted that the landlord did not comply with section 35 of the Act, because he did not give them two opportunities to schedule a move-out inspection.

Landlord's Response

The landlord stated that on December 31, 2014 the tenants returned their key and agreed to do a walk-through the next day. The landlord stated that he waited at the unit on January 1, 2015 but the tenants did not appear. The landlord submitted a copy of an email he received from the tenants on January 4, 2014, in which the tenants indicated that they were aware that the landlord intended to do a move-out inspection. The landlord submitted that the tenants extinguished their right to claim the security deposit because they did not comply with section 36 of the Act, which requires the tenants to participate in the move-out inspection.

The landlord provided evidence that on November 25, 2014 and December 5, 2015 the tenants emailed the landlord and requested that he not email the male tenant at work. The landlord stated that he did not use the tenants' forwarding address that they had provided on November 30, 2014 because it was the mailing address for the male tenant's place of work and they had asked not to disturb the male tenant at his place of work.

The landlord stated that they replaced the carpets in the rental unit later on in January 2015.

Analysis

Upon consideration of the evidence, I find that the tenants are entitled to double recovery of their security deposit.

Section 35 of the Act requires that a landlord provide tenants with two opportunities to schedule a move-out inspection. Section 38 of the *Residential Tenancy Act* requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the amount of the security deposit.

In this case, the tenants provided their forwarding address in writing on November 30, 2014. I do not accept the landlord's argument that he did not contact the tenants at the forwarding address provided because it was the male tenant's place of work. The tenants' emails clearly request only that the landlord not email the tenant at his place of work, and this instruction does not invalidate the forwarding address provided. The landlord ought to have mailed a Final Opportunity to Schedule a Condition Inspection form to the tenants at that address, but he did not. The landlord did not "rip apart" the rental unit until late January, so there would have been sufficient time for the landlord to schedule and carry out the move-out inspection.

The landlord was then deemed served with the tenants' forwarding address a second time on January 25, 2015, but he did not return the security deposit until February 16, 2015. The landlord therefore failed to repay the security deposit or make an application for dispute resolution within 15 the required time frame. I find that the tenants have established a claim for double recovery of the security deposit, in the amount of \$900.00.

As their application was successful, the tenants are also entitled to recover the \$50.00 filing fee for the cost of their application.

Conclusion

I grant the tenants an order under section 67 for the balance due of \$950.00. If the tenants cashed the landlord's cheque for \$450.00, then they must deduct this amount from the monetary order. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 9, 2016

Residential Tenancy Branch