



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of double the security deposit - Section 38;
2. An Order for the Landlord’s compliance - Section 62.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

In reviewing the claims in the application, given the undisputed evidence that the tenancy had ended, and as a landlord’s compliance can only be ordered during a tenancy, I dismiss the claim for compliance.

Issue(s) to be Decided

Has the Tenant provided its forwarding address in writing?

Background and Evidence

The tenancy consists of a room in a lower unit with the Landlord residing in the upper unit. The tenancy started on February 1, 2015 and ended on April 30, 2015. Rent of \$450.00 was payable monthly. At the outset of the tenancy the Landlord collected \$225.00 as a security deposit. Although the Parties looked at the unit together before move-in no condition report from an inspection of the unit at move-in was completed. At the end of the tenancy the Landlord returned \$145.00 and retained \$80.00 for cleaning the unit. The Tenant did not provide its forwarding address to the Landlord prior to sending the application dated December 12, 2015. The Tenant’s address has remained the same as on the application.

The Landlord states that the Tenant verbally agreed that the Landlord could keep the \$80.00. The Tenant submits that he did not agree to a cleaning fee.

The Tenant claims return of double the security deposit.

Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit, the landlord must complete and sign a condition inspection report and a copy of that report must be given to the tenant.

Section 24 of the Act provides that where a landlord fails to make and provide the condition inspection report, the landlord's right to claim against the security deposit is extinguished. As the Landlord did not complete a condition inspection report at move-in I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38 of the Act provides that a landlord may retain a portion of a security deposit with the written agreement of the tenant. This section further provides that this right of retention does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit has been extinguished. Even if the Landlord's had the written agreement of the Tenant to retain a portion of the security deposit for a cleaning fee, and I note that there is no provision for an oral agreement, since the Landlord's right to claim against the security deposit was extinguished no agreement by the Tenant could allow the Landlord's retention of any portion of the security deposit.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

As the Tenant did not provide its forwarding address prior to making the application but accepting that the application contains the Tenant's forwarding address, I find that the Landlord must now deal with the security deposit. As the Landlord's right to claim against the security deposit has been extinguished, the security deposit must be returned independent of any claim for damage to the unit that the Landlord may have. I therefore order the Landlord to pay the Tenant the remaining deposit plus zero interest of \$80.00 within 15 days of this hearing date.

I dismiss the Tenant's application with leave to reapply for return of double the security deposit should the Tenant not receive the remaining security deposit by August 12, 2016.

As an order for the Landlord's compliance can only be made during a tenancy, and as the tenancy has ended I dismiss the claim for compliance.

The orders herein were given orally at the hearing.

Conclusion

The application is dismissed with leave to reapply.

I order the Landlord to return the remaining security deposit of \$80.00 to the Tenant by no later than August 12, 2016.

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: July 29, 2016

Residential Tenancy Branch