



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for damage to the unit;
2. For a monetary order for money owed or compensation under the Act;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order for compensation under the Act;
2. Return double the security deposit; and
3. To recover the cost of filing the application.

Only the tenant appeared.

Landlord's application

This matter was set for hearing by telephone conference call at 2:00 P.M on September 8, 2016. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the tenant. Therefore, as the landlord did not attend the hearing by 2:10 P.M, and the tenant appeared and was ready to proceed, I dismiss the landlord's application without leave to reapply.

Tenant's application

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on January 28, 2016, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

Issues to be Decided

Is the tenant entitled to monetary compensation for money owed?

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

Background and Evidence

The tenancy began on September 1, 2014. Rent in the amount of \$700.00 was payable on the first of each month. A security deposit of \$350.00 and a pet damage deposit of \$350.00 were paid by the tenant (the "Deposits").

The tenant testified that they received a 2 Month Notice to End Tenancy For Landlord's Use of Property issued on December 23, 2016, with an effective date of February 29, 2016. The tenant stated that they ended the tenancy earlier as permitted by the Act; however, when they vacated the rental unit the landlord did not give them compensation equivalent to one month's rent. The tenant seeks compensation in the amount of \$700.00.

The tenant testified that they vacated the premises on January 8, 2016. The tenant stated that they provided the landlord with a written notice of their forwarding address in their letter to end the tenancy earlier dated December 30, 2015. Filed in evidence is a copy of the letter.

The tenant testified that the landlord made an application for dispute resolution claiming against the Deposits; however, the landlord had extinguished their rights to do so as they did not conduct a move-in or move-out condition inspection.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under section 51 of the Act, a tenant who receives a notice to end tenancy under section 49 of the Act, is entitled to receive from the landlord on or before the effective date of the landlord's notice the amount that is equivalent of one month's rent payable.

In this case, I accept the undisputed evidence of the tenant that they received a notice to end tenancy under section 49 of the Act, a copy of the Notice was submitted as evidence.

I further accept the undisputed evidence of the tenant that the landlord did not give them compensation as required by section 51 of the Act. I find the landlord has breached the Act, when they failed to compensate the tenant the amount equivalent to one month's rent. Therefore, I find the tenant is entitled to compensation in the amount of **\$700.00**.

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

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.

Although the landlord made an application for dispute resolution claiming against the Deposits, the landlord did not appear to present the merits of that claim.

Further, I accept the undisputed evidence of the tenant that the landlord did not perform a move-in or move-out condition inspection in accordance with the Act, and extinguished their rights under the Act to make a claim against the Deposits for damages. I find the landlord has breached section 23 of the Act and therefore was not entitled to claim against the security deposit for damages pursuant to section 24 of the Act. I find the landlord breached section 38(1)(c) of the Act, when they failed to return the security deposit to the tenant within 15 days.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the Deposits because they feel they are entitled to it or are justified to keep it.

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 Deposits.

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.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of **\$1,400.00**, comprised of double the pet damage deposit (\$350.00) and security deposit (\$350.00) on the original amounts held.

I find the tenant has established a total monetary order of **\$2,200.00**, comprised of the above amounts and the \$100.00 fee for filing this Application.

The tenant is given a formal monetary order pursuant to 67 of the Act, 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 and enforced as an order of that court.

Conclusion

The tenant's application for a monetary order for compensation and for return of double the Deposits is granted. The tenant is granted a monetary order in the above noted amount.

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: September 13, 2016

Residential Tenancy Branch