



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 a tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

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

Background and Evidence

The tenancy started June 1, 2014 and the tenant paid a security deposit of \$750.00. The tenancy ended October 31, 2015. The tenant provided a forwarding address to the landlords by way of a letter he sent to them via registered mail on or about December 3, 2015. The landlords received the letter and sought the tenant's agreement to make deductions from the security deposit but the tenant did not agree. The landlords did not refund the security deposit to the tenant or file an Application for Dispute Resolution.

During the hearing, the landlords attempted to introduce evidence as to the condition of the rental unit left by the tenant, unpaid utilities, among other things; however, the landlords had not filed an Applicant for Dispute Resolution and such matters were not before me to decide. The landlords were informed of their right to file an Application for Dispute Resolution to make a monetary claim against the tenant.

The landlords also argued that they were unaware of the requirements of the Act with respect to handing security deposits.

Analysis

The Act applies to all residential tenancies in this Province, unless specifically exempted. A party cannot avoid the Act and ignorance of the provisions in the Act is not an exemption from its provisions. Accordingly, I found the landlords' submissions concerning ignorance of the Act to be irrelevant to the determining whether the tenant is entitled to return of double the security deposit.

As the parties were informed during the hearing, the landlords' submissions regarding the condition of the rental unit, unpaid utilities, among other things were not issues for me to decide for this proceeding as the landlords had not made an Application for Dispute Resolution to make a claim against the tenant or the security deposit. The purpose of this hearing was to hear the tenant's application and determine whether the landlords complied with the Act with respect to handling of the security deposit. The landlords remain at liberty to make a separate application for damages within two years of the tenancy ending.

Below, I provide my findings and reasons as to whether the tenant is entitled to return of double the security deposit.

Section 38(1) of the Act requires a landlord to either return the security deposit to the tenant or make an Application for Dispute Resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Where a landlord violates section 38(1) of the Act, the security deposit must be doubled pursuant to section 38(6) of the Act.

Deductions from the security deposit may be made by the landlord in limited circumstances as provided by the sections 38(3), 38(4) and 38(5) of Act by obtaining the tenant's written consent or authorization of an Arbitrator. The landlords did not obtain the tenants' written consent to make deductions or the authorization of an Arbitrator. Nor, did I hear any evidence to suggest the tenant extinguished the right to return of the security deposit.

Since the tenant provided a written forwarding address to the landlords by registered mail sent on or about December 3, 2015 the landlords had 15 days from the day the registered mail was received to refund the deposit or make an Application for Dispute Resolution since the tenant did not agree to any deductions and avoid the application of section 38(6) of the Act. I find the landlords failed to meet their obligations under

section 38(1) of the Act and must now pay the tenant double the security deposit under section 38(6).

In light of the above, the tenant is awarded \$1,500.00 for return of double the security deposit plus \$100.00 for recovery of the filing fee paid for this application. The tenant is provided a Monetary Order in the total amount of \$1,600.00 to serve and enforce upon the landlords.

Conclusion

The tenant is provided a Monetary Order in the amount of \$1,600.00 to serve and enforce upon the landlords.

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 29, 2016

Residential Tenancy Branch