



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application brought by the tenant requesting a monetary Order in the amount of \$1800.00, and requesting recovery of her \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

Parties agree that this tenancy began on April 1, 2015 and ended on March 31, 2016.

The parties also agree that the tenant serve the landlord with a forwarding address in writing by registered mail, which the landlord admits to receiving mid-March of 2016.

The applicant testified that she and her roommates paid a combined security deposit of \$900.00, in two payments, one \$600.00 payment, and one \$300.00 payment.

The applicant further testified that she gave the landlord no permission to keep any of the security deposit, and yet he kept all but \$180.00 which was returned by cheque on April 19, 2016; however she has not cash that cheque.

The applicant is therefore requesting an Order for return of double the \$900.00 deposit for a total of \$1800.00 and is also requesting recovery of her \$100.00 filing fee.

The respondent testified that the tenants did not pay a total deposit of \$900.00 and in fact only paid \$600.00 as is shown on a copy of the tenancy agreement which he has supplied in his evidence package.

The respondent further testified that he did not return the whole deposit as the tenants left the rental unit in need of professional services required to bring the suite up to a livable standard.

The respondent further testified that he did not receive any written permission from the tenants to keep the security deposit, or a portion thereof; however the tenants did not participate in the moveout inspection.

The respondent further testified however, that he did not propose a second opportunity to the tenants by providing the tenant with a notice in the approved form.

Analysis

Section 35 of the Residential Tenancy Act states:

35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Section 36(2) of the Residential Tenancy Act states:

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],

Further section 17 of the Residential Tenancy Regulations states:

17(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

- (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

Therefore, since the landlord never proposed a second opportunity to the tenant on the approved form, the landlord did not have the right to claim against the security deposit for damages.

The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants full security deposit and did not have the right to claim against the security deposit for damages, and therefore the deposit should have been returned to the tenant within the 15 day time limit required under the Act.

This tenancy ended on March 31, 2016 and the landlord had a forwarding address in writing by mid-March 2016, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenant claims that \$900.00 security deposit was paid to the landlord, however the landlord has provided evidence that shows that a \$600.00 security deposit was paid and the tenant has provided no further evidence to dispute that. Therefore it is my decision that the landlord must pay double the \$600.00 amount for a total of \$1200.00.

I also allow the tenants request for recovery of the \$100.00 filing fee.

Conclusion

Pursuant to sections 38 and 72 of the Residential Tenancy Act I have issued a monetary Order in the amount of \$1300.00.

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: October 05, 2016

Residential Tenancy Branch