



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 a monetary order for return of the security deposit paid to the Landlord and for the recovery of the filing fee for the Application.

Both parties signed into the Hearing and gave affirmed testimony.

The Tenant testified that she served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on September 19, 2016. She provided the tracking numbers for the registered documents. I find the Landlord has been duly served in accordance with the Act.

The Landlord acknowledged receipt of the Tenant's documentary evidence, as described by me, at the same time as he received the Notice of Hearing. The Landlord also provided documentary evidence to the Residential Tenancy Branch. He stated that he mailed copies to the Tenant "two weeks ago", but the Tenant stated that she has not received any documents from the Landlord.

It is important to note that the Landlord's documents contain photographs of the rental unit taken at the end of the tenancy, along with written submissions including a damage claim against the Tenant. I confirmed that the Landlord has not made his own Application for Dispute Resolution. I advised the parties that the only issue before me today is the Tenant's Application and that the Landlord may make his own application if he so desires.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

Background and Evidence

The Tenant paid the Landlord a security deposit of \$700.00 on or about June 30, 2014. The Tenant vacated the premises on July 31, 2016.

The Tenant testified that she provided the Landlord with a written notice of her forwarding address for the purposes of returning the security deposit on July 31, 2016. The Landlord acknowledged receipt of the written notice on July 31, 2016, and stated that she had also provided her forwarding address in writing on July 20, 2016.

The Tenants testified that she was represented by an agent at the move-out condition inspection and that her agent did not sign over any of the security deposit to the Landlord.

The Landlord testified that he was unsatisfied with the condition of the rental unit when the Tenant moved out and that he kept the security deposit to pay for damages. The Landlord stated that the Tenant's agent "did not say either way if [the Landlord] could keep the security deposit".

Analysis

A security deposit is held in a form of trust for a tenant by a landlord. A landlord may not keep a security deposit because they feel they are entitled to it or are justified to keep it. If the parties do not agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenant had agreed that the Landlord could retain any portion of the security deposit.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit as required under Section 38 of the Act.

Section 38(6) of the Act provides that if a landlord does not return the security deposit, or make an Application against the deposit within the 15 day time period set out in the Act, the landlord must pay the tenant double the amount of the security deposit.

The Landlord may still make an Application for alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this Hearing.

The Tenant has been successful in her Application and I find that she is entitled to recover the cost of the filing fee from the Landlord.

Having made the above findings, I must Order, pursuant to Sections 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,500.00**, comprised of double the security deposit (2 x \$700.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenant are given a formal Order 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.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: February 21, 2017

Residential Tenancy Branch