



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 double the security deposit and for the return of the application filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and to make submissions to me.

Service of the tenant's application and notice of hearing, and service of the parties' respective evidence, was not at issue.

At the outset of the hearing the landlord confirmed the identity of the corporate landlord and I have added the corporate landlord to the style of cause accordingly.

Issue(s) to be Decided

Has there been a breach of s. 38 of the Act by the landlord such that the tenant is entitled to double the security deposit?

Is the tenant entitled to the application filing fee?

Background and Evidence

This tenancy began in December, 2015. Based on the tenancy agreement in evidence, it appears to have been a month to month tenancy, although the landlord submitted that it consisted of two six month fixed term tenancies, the second expiring on January 31, 2017. It was agreed that monthly rent was \$650.00 and that the tenant paid the landlord a security deposit of \$325.00 around the beginning of the tenancy, which deposit remains in the landlord's possession.

The tenant provided the landlord with a written notice of his forwarding address by including it on the condition inspection report. The parties agreed that the tenancy ended on January 31, 2017.

The landlord testified that when the tenant and one of the managers conducted the move-out condition inspection report, the manager realized that the tenant had not met his obligation to fill the propane tank for the rental unit to the level it had been at when he arrived. As a result, although she allowed the tenant to sign the move-out portion of the condition inspection report, the move-out and move-out inspection dates were left blank, on the understanding that the tenant was to add propane to the tank before the condition inspection report was finalized.

Both the tenant and the landlord agreed that the tenant did not sign over a portion of the security deposit in writing. The landlord says that he and the tenant came to an oral agreement that the landlord would retain the security deposit in partial satisfaction of the cost of filling the propane tank, but the tenant says that the landlord made this offer and the tenant decided not to accept it and to apply for return of the security deposit instead.

The landlord testified that the tenant owes for the cost of filling the propane tank. A copy of a receipt was provided. The tenancy agreement indicates that the heat is not included in the tenancy. The landlord testified that around the beginning of the tenancy the propane needed to be filled and at the tenant's request the landlord filled it at its own expense and the tenant then repaid the landlord. At this time the landlord told the tenant that the propane levels should never go below 30% and that he would be responsible for replenishing the propane to the level it had been at when he arrived. The landlord further said that when the tenant vacated he left the propane tank completely empty and because the weather was very cold and the carpets and interior water lines were frozen the landlord had to have an emergency propane delivery.

Analysis

The Act contains comprehensive provisions dealing with security and pet damage deposits. Section 38 requires that the landlord handle the security deposit as follows:

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.

(Emphasis added)

Based on the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act. Both the landlord and the tenant agreed that there was no written agreement that the landlord could retain any portion of the security deposit. The landlord acknowledged that he has not applied to retain a portion of the security deposit, as required by s. 38.

The security deposit is held in trust for the tenant by the landlord, who may not simply keep it without establishing the right to do so by way of an application to the Residential Tenancy Branch or obtaining the tenant's agreement. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

The landlords may still file an application for the cost of the propane and any other damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, that the landlord pay the tenants the total sum of **\$750.00**, comprised of double the security deposit (2 x \$325.00) and the \$100.00 fee for filing this application.

Conclusion

The tenant is given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with it, it 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 s. 9.1(1) of the *Residential Tenancy Act*.

Dated: April 03, 2017

Residential Tenancy Branch