



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 landlords, for money owed for compensation for loss or damage under the Act, regulation, or tenancy agreement. and for the return of the application filing fee.

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and had opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified that she served each of the two landlords individually with her application and notice of hearing by registered mail to the mailing address for the landlords on the tenancy agreement. The tenant provided the Canada Post registered mail tracking numbers for these deliveries. She also testified that both packages were returned to her and marked "Return to sender/Refused by addressee." Refusal to accept service does not override the deemed service provisions under the Act. Accordingly, I find that the landlords were individually served in accordance with the Act.

Issue(s) to be Decided

Has there been a breach of s. 38 of the Act by the landlord?

Is the tenant entitled to return of the security deposit and/or any additional compensation under the Act, regulation, or tenancy agreement?

Is the tenant entitled to recover the application filing fee?

Background and Evidence

The tenant gave affirmed testimony that this tenancy began in October of 2015, and her security deposit of \$300.00 from another suite she had been renting from the same landlords was transferred to the new tenancy. A copy of the tenancy agreement was in evidence. Only one of the two landlords named in this dispute is a party to the agreement.

The tenancy agreement also indicates a month to month tenancy but includes this: "It is agreed that the tenant and landlord may give each other 1 month's notice to vacate without cause plus 1 wk."

The tenancy ended on November 30, 2016 after the landlords gave the tenant "1 month plus one week notice to vacate without cause" and advised that they would be increasing the rent from \$823.20 to \$975.00. The landlords offered the tenant the unit at the increased rate, but the tenant could not afford it. I note this is contrary to the Act, and that s. 5 prevents parties from avoiding or contracting outside of the Act. Before she left the tenant had the unit cleaned professionally.

The tenant further testified that she provided the landlords with her forwarding address for return of the security deposit by email on December 1, 2016 at 11:31 am. In her email the tenant requested that the landlords return her security deposit by mail or by direct deposit.

The tenant provided a copy of a receipt dated December 12, 2016 from the landlords entitled "damage deposit refund." It sets out various amounts for various things that the landlords claim against the tenant's \$300.00 security deposit. These total \$316.00. The tenant received this in the mail on December 20, 2016 at her forwarding address.

The tenant did not sign over a portion of the security deposit. The landlords have not applied for authorization to retain the security deposit. The tenant also testified that the landlords did not perform an incoming or outgoing condition inspection report.

The tenant seeks return of the \$300.00 security deposit, \$60.00 for the professional cleaning of the suite, and \$300.00 compensation for emotional stress caused by the non-return of the damage deposit.

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 landlords have breached of the Act. The tenant did not agree, in writing, that the landlords could retain any portion of the security deposit, and the landlords did not apply, within 15 days of the end of the tenancy or receipt of the tenants' forwarding address, to retain a portion of the security deposit, as required by s. 38.

I further note that the landlords extinguished their right to claim against the security deposit by failing to perform a written condition inspection report at the start of the tenancy as per s. 24 of the Act.

The landlords are in the business of renting and have a duty to abide by the laws pertaining to residential tenancies. 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 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.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, the landlord who has contracted with the tenant (who is named and who has signed the tenancy agreement) pay to the tenant the total sum of **\$700.00**, comprised of double the security deposit (2 x 300.00) and the \$100.00 application filing fee.

The tenant has not provided sufficient evidence to prove that she suffered emotional distress sufficient to warrant an additional award for the landlords' failure to deal properly with the security deposit. There is no jurisdiction under the Act to award the tenant the cleaning costs she seeks.

Conclusion

The tenant is 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 it, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

The landlords are cautioned that both rent increases and termination of tenancies are governed by the Act and that the actions they have taken with respect to the rent increase for this tenancy, and the provisions around termination of tenancy in this tenancy agreement are contrary, to the Act and not valid.

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 Act.

Dated: April 12, 2017

Residential Tenancy Branch