



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC

Introduction

This hearing convened as a result of Tenants' Application for Dispute Resolution wherein the Tenants requested a Monetary Order representing double the security deposit paid.

The hearing was conducted by teleconference on April 27, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Are the Tenants entitled to return of double the security deposit paid?

Background and Evidence

The Tenant, D.S., testified as to the tenancy as follows: it began November of 2015; monthly rent was payable in the amount \$900.00; and, the Tenants paid a security deposit in the amount of \$450.00.

The Tenant testified that the Landlord failed to perform a move in, or move out condition inspection report.

The Tenant testified that they moved out April 30, 2016.

The Tenant testified that he gave his forwarding address to the Landlord when he gave his notice to move out of the rental unit and he did not authorize the Landlord to retain any portion of the deposit.

At 1:38 p.m. the Landlord and her translator, A.L., called into the hearing. I read to them the above testimony of the Tenant.

The Landlord testified that she did not do a move in condition inspection report in accordance with the *Act* and the *Regulations*, although she stated that she did a thorough inspection and took photos both at the start and end of the tenancy.

She also confirmed that the Tenant paid a security deposit of \$450.00 and that they vacated the rental unit on April 30, 2016.

She also confirmed that she did not make an application for dispute resolution or return the security deposit within 15 days of the receipt of the Tenants' forwarding address in writing.

The Landlord stated that the Tenant "verbally agreed" that she could retain the \$450.00 security deposit towards the cost of scratches and other damage in the rental unit.

Analysis

Section 38 of the *Residential Tenancy Act* provides as follows:

Return of security deposit and pet damage deposit

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenants undisputed evidence that they did not agree to the Landlord retaining any portion of their security deposit. While the Landlord alleged the Tenant verbally agreed she could retain the funds, the Tenant disputed this claim, and in any event, section 38(4)(a) requires such an agreement to be in writing.

The Landlord failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord also extinguished her right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the *written* agreement of the Tenants an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenants, they must either obtain the Tenants' consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$900.00**, comprised of double the security deposit.

Conclusion

The Tenants are given a formal Monetary Order in the amount of **\$900.00** 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 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: April 27, 2017

Residential Tenancy Branch