



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 under the *Residential Tenancy Act* (the “Act”) for return of the security deposit and for the application filing fee.

The tenant attended the hearing and had the opportunity to present his evidence orally and in written and documentary form and to make submissions.

As the landlord did not attend, service of the tenant’s application and notice of hearing was considered. The tenant testified that he served the landlord with these materials by sending them by registered mail on March 7, 2017 to the landlord’s mailing address. A registered mail receipt was in evidence. Based on the tenant’s affirmed testimony and documentary evidence I accept that the landlord was served on March 12, 2017, five days after the materials were mailed, pursuant to sections 89 and 90 of 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 recover the application filing fee?

Background and Evidence

A tenancy agreement was in evidence. It recorded a tenancy beginning in May of 2015 between the landlord and several tenants with rent of \$1,400.00 due on the first each month and a security deposit of \$700.00 paid at the beginning of that tenancy. The tenant stated that several different written tenancy agreements had been entered as

different tenants replaced one another, and that he had been a tenant for approximately 6 months before the May 2015 agreement was entered. The tenant also testified that the landlord continues to hold the \$700.00 security deposit.

The tenant further testified that he and his co-tenants vacated the premises on February 28, 2017 and that he provided the landlord with his forwarding address in writing on March 3 or 4, 2017, when he attended at the rental unit to conduct the move-out condition inspection report. He provided the landlord with his forwarding address again when he sent her his application for return of the security deposit, deemed to have been received on March 12, 2017.

The tenant also said that when he attended to conduct the condition inspection at move-out, the rental unit was already being substantially renovated, which the landlord stated was necessarily because of the state of the rental unit after the tenants vacated. Although the tenant signed the condition inspection report he indicated that he did not agree with it. The tenant did not submit a copy of the condition inspection report on move-in or move-out because the landlord did not provide these to him.

The tenant also stated that he did not sign over a portion of the security deposit and that the landlord remains in possession of that deposit. The landlord has not applied to retain the security 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 upon the undisputed testimony of the tenant, I find that the landlord is in breach of the Act. The tenant did not authorize the landlord to retain any portion of the security deposit. The landlord did not apply within 15 days of the end of the tenancy or receipt of the tenant's forwarding address 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 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.

The landlord may still file an application for damage to the rental unit. However, the issue of the security deposit has been conclusively dealt with in this hearing. I also note that the landlord has extinguished her right to claim against the security deposit by failing to give the tenant a copy of the condition inspection reports, as per sections 24 and 36 of the Act.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, that the landlords pay the tenant the total sum of **\$1,500.00**, comprised of double the security deposit (2 x \$700.00) and the \$100.00 application filing fee.

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.

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: May 09, 2017

Residential Tenancy Branch