



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding S ARMSTRONG MD INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 27, 2018 (the “Application”). The Tenant applied for the return of double the security deposit and reimbursement for the filing fee.

The Tenant appeared for the hearing. S.C., co-owner and property manager of the rental unit, appeared for the Landlord. I explained the hearing process to both parties and neither had questions when asked. Both parties provide affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. S.C. confirmed she received the hearing package and Tenant’s evidence and raised no issues in this regard. The Tenant confirmed he received the Landlord’s evidence and raised no issues in this regard.

Both parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

A written tenancy agreement was submitted as evidence and both parties agreed it is accurate. The agreement was between the Landlord, S.C. and the Tenant regarding the rental unit. The tenancy started July 1, 2015. A security deposit of \$950.00 was paid. Both parties agreed the deposit was paid April 28, 2015 and that the Landlord still has the deposit.

The Tenant testified that he moved out of the rental unit January 31, 2018. S.C. testified the Tenant moved out in December of 2017 and his girlfriend stayed until the end of January. The Tenant replied that he was coming and going from the rental unit up until the end of January.

The Tenant testified that he posted a letter with his forwarding address on the door of the Landlord's place of business as indicated on the tenancy agreement and put a copy in the mailbox on March 4, 2018. S.C. agreed the Landlord received the Tenant's forwarding address in writing March 4, 2018.

Both parties agreed to the following. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply for dispute resolution to keep the security deposit.

The parties testified regarding the Tenant verbally agreeing to pay for damage to the rental unit and missing items at the end of the tenancy which I will not detail here as in my view it is not relevant.

Both parties agreed to the following. Upon move-in, a "walk-through" was done but not an "official" condition inspection. Upon move-out, the parties walked around the unit and noted items missing. A Condition Inspection Report was not completed upon move-in or move-out.

Analysis

I find the following based on the testimony of both parties. There was a tenancy agreement between the parties. The Tenant paid a security deposit of \$950.00 to the Landlord. The Landlord still has the security deposit. The Landlord received the Tenant's forwarding address in writing March 4, 2018. The Landlord did not have an

outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply for dispute resolution to keep the security deposit.

I accept the testimony of both parties that upon move-in and move-out a “walk-through” was done but not an “official” condition inspection and a Condition Inspection Report in compliance with the *Act* was never completed.

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy. Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or apply for dispute resolution to keep it within 15 days of receiving the Tenant’s forwarding address in writing on March 4, 2018.

Based on my findings, the Tenant had not extinguished his right to return of the security deposit under section 24(1) or 36(1) of the *Act*. Further, the Landlord did not have authority under the *Act* to retain the security deposit.

The Landlord did not repay the security deposit or apply for dispute resolution to keep it within 15 days of receiving the Tenant’s forwarding address and therefore did not comply with section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the security deposit and must pay the Tenant double the security deposit.

I note that the condition of the rental unit upon move-in and move-out is irrelevant to this application. If the Landlord believed the Tenant damaged the unit, the Landlord was required to apply for dispute resolution claiming against the security deposit for the damage. The Landlord was not entitled to keep the security deposit simply because they believed the unit was damaged or left unclean.

I find the Tenant is entitled to a Monetary Order in the amount of \$1,900.00 for the return of double the security deposit. There is no interest owed on the security deposit as the percentage owed has been 0% since 2009.

Given the Tenant was successful in this application, I award reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$2,000.00 and I grant this Order. This Order must be served on the Landlord as soon as possible. If the Landlord fails 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 *Act*.

Dated: June 15, 2018

Residential Tenancy Branch