Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on November 1, 2016 and ended on February 1, 2018. The tenants were obligated to pay $1000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a $500.00 security deposit which the landlord still holds. The tenant testified that written condition

inspection reports was not conducted at move in or move out. The tenant testified that she provided his forwarding address in a letter to the landlord on January 26, 2018.

The landlord gave the following testimony. The landlord testified that the tenant left the unit dirty and damaged at move out. The landlord testified that the tenant did not pay their last months' rent. The landlord testified that he didn't think it's fair that she get her deposit back. The landlord testified that he did not file an application to retain the deposit or have the tenants' written authorization to withhold any of it. The landlord testified that he will be pursuing his own application for damages and unpaid rent regardless of the outcome of this hearing.

<u>Analysis</u>

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

Section 38 (1) says that 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.

And Section 38 (6) says 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.

The landlord confirmed that he had not filed an application to retain the deposit nor did he have the tenants' written authorization to retain any portion of it. Based on the testimony of the tenant, the documentary evidence before me, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double her deposits in the amount of $1000.00.

Conclusion

The tenant has established a claim for $1000.00. I grant the tenant an order under section 67 for the balance due of $1000.00. This order may be filed in the Small Claims 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: September 20, 2018

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Residential Tenancy Branch