



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package by regular mail sometime in July 2018. The landlord confirmed receipt of the dispute resolution package in July 2018 but did not know on what date. While the tenant did not serve the landlord in accordance with section 89 of the *Act*, I find that the landlord was sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act* because the landlord confirmed receipt of the dispute resolution package.

At the beginning of this hearing both parties agreed that the address on the application was incomplete. Pursuant to section 64 of the *Act*, I amended the application to reflect the correct address.

Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 19, 2017 and ended on June 5, 2018. Monthly rent in the amount of \$850.00 was payable on the first day of each month. A security deposit of \$400.00 was paid by the tenants to the landlord. Both parties agreed that this tenancy ended pursuant to a 10 Day Notice to End Tenancy for unpaid rent. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Tenant S.F. (the "tenant") testified that a move in condition inspection and inspection report were not completed when she moved in. The landlord testified that a move in condition inspection report was completed with the tenants when they moved in but that he did not provide the tenants with a copy. The move in condition inspection report was not entered into evidence.

Both parties agreed to the following facts. A move out condition inspection and inspection report were completed on June 15, 2018 when the tenants moved out. The landlord did not provide the tenants with a copy of the move out condition inspection report. The tenant provided her forwarding address in writing to the landlord on the move out condition inspection report on June 15, 2018. The move out condition inspection report was not entered into evidence.

The landlord testified that he did not file for dispute resolution with the Residential Tenancy Branch because he filed a claim against the tenant for damages arising out of the tenancy in Small Claims Court.

The tenant testified that she did not authorize the landlord to deduct any amount from her security deposit.

Both parties agreed that the landlord has not returned the tenants' security deposit to the tenants.

Analysis

Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants.

Section 24(2)(c) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the landlord's testimony, I find that he did not give a copy of the move in condition inspection report to the tenants as required under section 24(2)(c) of the *Act*. Therefore, the landlord's right to claim against the security deposit for damage to residential property is extinguished.

As I have determined that the landlord is ineligible to claim against the security deposit, pursuant to section 24 of the *Act*, I find that I do not need to consider the effect of the landlord failing to provide a copy of the move out condition inspection report to the tenants.

Security Deposit Doubling Provision

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

In this case the landlord has not made an application to retain the tenants' security deposit within 15 days after the later of the end of the tenancy and the tenants' provision of their forwarding address in writing. The fact that the landlord has initiated proceedings in Small Claims Court does not diminish his obligations under the *Residential Tenancy Act*. I find that the tenants are entitled to receive double their security deposit in the amount of \$800.00.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$800.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: October 10, 2018

Residential Tenancy Branch