



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD and FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double her security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of a portion of her security deposit, double the original security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlords and the Tenant agree that this was a fixed term tenancy that began on June 29, 2008 and was supposed to end on June 31, 2010; that the tenancy ended on November 01, 2008; that the Tenant paid a security deposit of \$500.00 on July 13, 2008; that the Tenant paid a pet damage deposit of \$250.00 on June 27, 2008; and that the Landlords returned \$250.00 of the security and pet damage deposits on November 10, 2008.

The Landlords and the Tenant agree that the Tenant turned over the keys to the rental unit to the new tenant on November 02, 2008. The Tenant stated that she gave the new tenant her forwarding address in writing at the same time, with the understanding that it would be forwarded to the Landlords. The Landlords stated that they did not receive the Tenant's forwarding address from the new tenant, although they acknowledge that she provided it verbally on November 01, 2008.

The Landlords and the Tenant agree that the Tenant agreed, in writing, to allow the Landlord to keep the remainder of the security and pet damage deposits, as compensation for the Tenant ending the fixed term tenancy agreement early. The Landlords submitted a copy of a letter, dated November 10, 2008, in which the Tenant agreed to allow the Landlords to retain the remainder of her security deposit and pet damage deposit as compensation for ending the fixed term tenancy before the scheduled end date. The letter states that the Landlords were being permitted to retain a portion of the deposits because the Landlords lost rental revenue, as they were unable to find a new tenant. The letter initially stated that the Landlords were retaining a portion of the deposits as compensation for cleaning, but both parties agreed to amend the letter to remove the reference to the need for cleaning.

The Tenant stated that after signing the letter on November 10, 2008 she realized that a new tenant had moved into the rental unit. She contends that she should not have to compensate the Landlords for loss of revenue for the month of November, as the rental unit was rented during that month.

At the hearing both Landlords stated that they found a new tenant for December 01, 2008. The male Landlord stated that he allowed the new tenant to park his vehicles at the rental unit in November and that the new tenant did some work in the rental unit in November after regular business hours, but he states he did not receive rent from the tenant for the month of November.

The Landlords submitted a letter from the current tenant of the rental unit, who stated that he moved into the rental unit on December 01, 2008. He stated that he was in the rental unit on different occasions in November completing repairs to locks and door handles.

The Tenant stated that two neighbours advised her that several people were living in the rental unit in November of 2008, although she submitted no evidence to corroborate this statement. She submitted photographs that she states show the new tenant's vehicles were parked at the rental unit on November 11, 2008, November 15, 2008, November 18, 2008, November 20, 2008, November 21, 2008, and November 26, 2008.

Analysis

Section 38(4)(a) of the *Act* stipulates that a landlord may retain an amount from a pet damage deposit or security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain to pay a liability or an obligation. In these circumstances, I find that the Tenant did give the Landlords written authorization to retain a portion of her security deposit and her pet damage deposit as compensation for loss of revenue they incurred when the Tenant ended the tenancy early. I find that the Landlords did not retain any portion of the deposits that they did not have written authority to retain.

I find that the Tenant submitted insufficient evidence to show that she authorized the Landlords to retain a portion of her security deposit and pet damage deposit under false pretences. Specifically, I find that the Tenant has not established that the Landlords did not suffer a loss of revenue for the month of November, which forms the basis of their agreement regarding the retention of a portion of the security deposit and pet damage deposit. In rendering a decision in this matter, I was guided by the basic legal principle that places the burden of proving a fact on the person who alleges it. In these circumstances, the burden of proving that the Landlords' did not lose revenue during the month of November rests with the Tenant, as she is alleging that they misrepresented that fact when she authorized them to retain a portion of her security and pet damage deposits.

In determining that the Tenant has submitted insufficient evidence to show that the Landlords misled her when they told her that they had suffered a loss of income for the month of November, I considered the following:

- The Tenant submitted no evidence to corroborate her statement that the neighbours believe that people were living in the rental unit
- Although the Tenant submitted photographs of the new tenant's vehicles parked at the rental unit on several occasions, she submitted no evidence to refute the Landlord's claim that the Tenant was permitted to park his vehicles at the rental unit during the month of November
- The letter from the new tenant which specifically states that he was not living at the rental unit until December 01, 2008
- The letter from the new tenant which states that he was working in the rental unit on various occasions during the month of November of 2008, which offers a reasonable explanation for his vehicle being at the rental unit during that month.

Conclusion

As the Tenant has failed to show that the Landlords retained a portion of her security deposit and pet damage deposit without lawful authority, I dismiss the Tenant's application for the return of a portion of her security deposit and for the penalty payable under section 38(6) of the *Act*. As the Tenant has failed to establish that her Application for Dispute Resolution has merit, I also dismiss her application to recover the filing fee for filing this Application for Dispute Resolution.

Date of Decision: March 2, 2009.

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