

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for an award of double their security and pet deposits. Both parties participated in the conference call hearing.

### Issue to be Decided

Are the tenants entitled to the return of double their pet and security deposits or any part thereof?

### Background and Evidence

The parties agreed that the tenancy began on September 1, 2009 and ended on June 30, 2010. The parties further agreed that the tenants paid a \$687.50 security deposit. The landlord testified that the tenants paid a further \$687.50 for a pet deposit but the tenants claimed that the pet deposit was just \$600.00.

On June 30 the parties conducted an inspection of the rental unit and filled out a condition inspection report (the "Report"). On the Report the landlord indicated 3 issues with the rental unit: holes in the living room ceiling, damage to the staircase and 3 spots on a bedroom wall. The tenants wrote on the report that they did not agree that the report fairly represented the condition of the rental unit and wrote "Unit is in good condition as it was before move in." Immediately below this area, the tenants signed a statement in which they filled out a pre-printed box as follows (the underlined italics represent what was written by the tenants) which was followed by a date and signature:

I A.H. agree to the following deductions from my security and/or pet damage deposit:

Security Deposit: ~~1300~~ 650 Pet Damage Deposit 650

The tenants testified that they did not realize that by signing that box they were agreeing to deductions.

There was some degree of conflict between the parties at the time the Report was filled out and the landlord testified that the tenants took the Report, wrote on it and handed it back. The parties agreed that they verbally agreed that the landlord would be entitled to retain \$50.00 from the deposits as the cost of repairing a step. At some point, the police were called and the tenants left the rental unit.

The tenant A.H. testified that when he arrived home, he reviewed the Report and realized that he had mistakenly agreed to deductions and had also written the wrong amounts for the deposits. He immediately went to the landlord's home to advise him of the errors. A.H. stated that the landlord was on the phone with the police the entire time he was at the landlord's home and further stated that he told the landlord that he had made a mistake and did not agree to the deductions. The landlord testified that when A.H. came to his home he immediately telephoned the police and did not interact with A.H. except to advise him that he should immediately leave and not return.

On July 9 the landlord sent the tenants a cheque for \$75.00. As the landlord believed he had collected \$687.50 for each of the deposits and the tenants had only agreed to \$1,300.00 in deductions on the Report, the landlord returned the balance of \$75.00 to them.

### Analysis

Having reviewed the circumstances surrounding the signing of the Report, I am satisfied that the tenants did not desire to agree to more than a \$50.00 deduction. I have arrived at this conclusion for a number of reasons. The Report clearly shows that the tenants thought the unit was in good condition and while the parties agreed that the landlord was entitled to \$50.00 for damage, nothing was said about why the remaining \$1,250.00 was given to the landlord when the tenants disputed the damages.

I am satisfied that the tenants misread the provision reproduced above and did not intend to release their security deposit to the landlord. As a general rule, when a party signs an agreement he is bound by that agreement. However, I find that the doctrine of *non est factum* should be applied as a defense. This is a principle whereby the signatory of a contract may be released from his obligations under the contract if he can prove that he was unaware of the meaning of the contract. In this case, I find that the tenants simply misread the Report

and were merely filling in what they believed at the time to be the amounts of their security and pet deposits. I find that the tenants did not understand what they were signing and although the fault was entirely their own, I find they should be released from their agreement to allow the landlord to retain the security and pet deposits.

The tenants seek to recover double their deposits. I find that the landlord acted reasonably in retaining the deposits. I accept that A.H. attempted to advise the landlord of his mistake when he attended at the landlord's home on June 30, but I find that the landlord was preoccupied with speaking to the police and did not receive the tenant's message that the Report had been signed in error. I find that the landlord complied with the Act by returning within 15 days of the end of the tenancy the \$75.00 which he knew he was not entitled to retain. I dismiss the claim for double the deposits.

In an unusual twist of events, the tenants claim they paid less than the landlord believes they paid. As this is the tenants' application and they acknowledge having paid just \$600.00 for the pet deposit, I find that they are limited to that amount. I find that the tenants paid a \$687.00 security deposit and a \$600.00 pet deposit for a total of \$1,287.50. The tenants agreed that the landlord could withhold \$50.00 for damage to the step and they have already received \$75.00. Deducting those amounts leaves a balance of \$1,162.50. I order the landlord to pay \$1,162.50 to the tenants forthwith. I grant the tenants a monetary order under section 67 for this sum which may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I find that as the tenants were the ones who misread and signed the Report in error they should bear the cost of their filing fee.

### Conclusion

The tenants are granted a monetary order for \$1,162.50.

Dated: December 29, 2010

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Residential Tenancy Branch