



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

This matter dealt with an application by the tenant for the return of double her security deposit and pet deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on December 08, 2010. The landlord confirmed receipt of the hearing documents.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

Is the tenant entitled to the return of double her security deposit and pet deposit?

Background and Evidence

Both parties agree that this month to month tenancy was due to start on September 01, 2010 however the tenant moved into the rental unit on August 15, 2010 by mutual consent. There was a verbal tenancy agreement in place and rent was \$650.00 per month due on the 1st of each month. The tenant paid \$325.00 security deposit and \$325.00 pet deposit on August 15, 2010. The landlord did not conduct a move in or move out condition inspection of the unit in accordance with sections 23 and 35 of the *Act*. The tenancy ended on November 15, 2010

although the tenant states she moved from the rental unit on November 12, 2010. The tenant gave the landlord her forwarding address in writing on either November 12 or November 14, 2010.

The tenant testifies that the landlord has not returned her security deposit and pet deposit to her within 15 days of the end of the tenancy or receiving her forwarding address in writing and she seeks to claim double the deposits to the sum of \$1,300.00.

The tenant testifies the landlord gave her \$275.00 cash on the November 12, 2010 as she had paid \$600.00 in rent for November, 2010 and moved out on the 15th of the month. The tenant testifies she moved out on November 12, 2010 and left three days clear to return to the unit to clean, however on November 13, 2010 when she returned she claims the landlord had changed the locks and she was unable to get back into the unit to clean. The tenant also states the landlord told her he had new renters moving into the unit on November 15, 2010.

The landlord disputes the tenants claim. The landlord testifies the tenant told him she would be moving out on December 01, 2010. She paid \$600.00 for rent for November and said she would pay the balance of \$50.00 a few days later. The landlord testifies that on November 05, 2010 the tenant told him she would be moving out on November 15 and not December 01 as planned. He states as she had not paid the balance of rent owed he was alright with her moving on November 15, 2010.

The landlord testifies that he returned \$275.00 to the tenant from her security deposit on November 13, 2010 in cash as she had to pay for a moving van. The landlord states he did not have another person renting the suite from November 15, 2010 but states he did change the locks on that day as the tenancy had ended.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I refer both Parties to s. 23(4) and 35(3) of the Act which require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition

inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the Act. Consequently, s. 24(2)(a) and s. 36(2)(a) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit and/or pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit and/or pet deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit and/or pet deposit to the tenant

I find that the landlord did receive the tenants forwarding address in writing either on November 12 or November 14, 2010. As a result, the landlord had until November 29, 2010 at the latest to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security deposit or pet damage deposit and consequently, pursuant to section 38(6) of the *Act*, the landlord must pay the tenant double the amount of her security and pet deposits.

However with regard to the sum of \$275.00 which was given to the tenant on either November 12, 2010 or November 13, 2010. The tenant argues this sum was for over payment of rent for November because she moved out in the middle of the month. The landlord argues it was the return of some of her security deposit to help with her moving costs. When a tenant's evidence is contradicted by the landlord, the burden of proof falls to the tenant as the person making the claim that the \$275.00 was money returned to her for rent and not part of her deposits as stated by the landlord. In this matter the tenant would need to provide additional corroborating evidence to satisfy the burden of proof. In this instance I find the tenant has not provided any evidence to show why the landlord returned this money to her and as she ended the tenancy without proper notice I am more inclined to accept that this sum was returned to her from her security deposit and not from rent. Consequently, I will deduct the sum of \$275.00 from the tenants' monetary award and she will receive a Monetary Order for the balance as follows:

Double the security deposit and pet deposit	\$1,300.00
Total amount due to the tenant	\$1,025.00

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,025.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: March 17, 2011.

Residential Tenancy Branch