



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD

Introduction

In response to an application by the tenants on July 22, 2010 for a monetary order in the double amount of their security deposit, a hearing was originally convened on December 14, 2010. While the landlord did not appear, the tenants attended and by way of decision of the same date, a monetary order was issued in favour of the tenants in the double amount of their security deposit.

Subsequently, on March 28, 2011 the landlord filed an application to review the decision and order. Thereafter, by way of decision dated March 31, 2011, the landlord's application was granted and this present hearing was scheduled.

Both parties attended and / or were represented at this hearing and gave affirmed testimony.

Issue to be decided

- Whether the tenants are entitled to a monetary order in the double amount of their security deposit

Background and Evidence

During the hearing the parties agreed that, pursuant to a written tenancy agreement, the fixed term of tenancy was from January 1 to December 31, 2010, even though the document itself erroneously shows a start date of January 1, 2009. Monthly rent was \$850.00, monthly parking was \$25.00, and a security deposit of \$425.00 was collected. While there is a move-in condition inspection report in evidence, it does not appear to bear the signatures of the tenants.

While evidence does not include a copy of the tenants' notice to end the tenancy, the parties agree that after giving notice, the tenancy ended effective June 30, 2010. A move-out condition inspection report was completed and signed by both parties on June 27, 2010.

The parties also agree that new tenants took possession of the unit effective July 1, 2010. While the tenants testified that it was they who found the new tenants, the landlord's agent could not confirm this, as he himself had not been directly involved with the matter at that time.

Within the "Part V – Move-Out Inspection" portion of the report, manual notations which were presumably made by the landlord's agent include, but are not limited to, the following:

Tenant request security deposit returned. Break lease reason is to move due to pregnancy and wanted to be close to parents. Pay to [SC, male tenant]

Further, however, within the "Security Deposit Statement" portion of the move-out condition inspection report, costs shown as sought by the landlord by way of deduction from the security deposit are limited to \$650.00, and referred to as "liquidated damages" for "break lease." As earlier noted, the move-out condition inspection report is signed by both parties. By way of their signature on the report, the tenants agree to the following provision on the report:

I agree with the amounts noted above and authorize deduction of the Balance Due Landlord from my Security Deposit and / or Pet Damage Deposits. If the total owing to the Landlord exceeds my deposit(s) I agree to pay the Landlord the excess amount.

While the amount of the liquidated damages shown of \$650.00 exceeds the amount of the security deposit of \$425.00, there is no evidence that the tenants either paid the difference to the landlord, or evidence that the landlord filed an application for dispute resolution to seek a monetary order for the difference. Further, the tenancy agreement also provides that the amount of liquidated damages is \$725.00, not \$750.00 which is erroneously shown as the amount on the move-out condition inspection report.

Consistent with provisions set out in section 63 of the Act, while the tenants indicated an interest in attempting to resolve the dispute during the hearing, the landlord's agent stated that he did not have authority to negotiate a settlement.

Analysis

Based on the documentary evidence and testimony of the parties, I find that by way of their signature(s) on the move-out condition inspection report, the tenants gave the landlord consent to retain the full amount of their security deposit as an offset to the liquidated damages clause contained in the tenancy agreement. I note that clause 5 in

the tenancy agreement clearly provides, in part, that “If the tenant ends the fixed term tenancy before the end of the original term.....the landlord may treat this Agreement as being at an end. In such event, the sum of \$625.00 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty.”

In summary, I find that the tenants have not established entitlement to either the return of their original security deposit, or the double return of their security deposit.

Section 82 of the Act addresses **Review of director’s decision or order**, and provides in part as follows:

82(3) Following the review, the director may confirm, vary or set aside the original decision and order.

Conclusion

Following from all of the above, the decision and order dated December 14, 2010 are hereby set aside, and the tenants’ application is hereby dismissed.

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*.

DATE: April 26, 2011

Residential Tenancy Branch