

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to retain a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on April 18, 2011. Both parties confirmed that they also received one another's written evidence packages in advance of this hearing and were prepared to proceed with this hearing. I am satisfied that the parties served one another with these documents in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to retain a portion of the tenant's security deposit as per the tenant's written agreement? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This month-to-month tenancy commenced on September 1, 2008. Monthly rent by the time the tenant vacated the rental unit on August 31, 2010 was set at \$625.00, payable in advance on the first of each month. The tenant paid a security deposit of \$312.50 and a pet damage deposit of \$312.50 on August 12, 2008. The parties agreed that the landlord returned \$533.18 of these deposits on September 15, 2010. The landlord retains \$91.82 plus interest from the tenant's security deposit.

The landlord applied for a monetary award of \$95.00, the amount of the security deposit the tenant agreed to allow the landlord to withhold for professional cleaning of the drapes. The landlord also applied for authorization to recover the \$50.00 filing fee for the landlord's application from the tenant.

The landlord entered into written evidence a copy of the Residential Tenancy Agreement and the Additional Terms attached to that Agreement. Clause 11, initialled by the tenant, required the tenant, upon vacating the rental unit, to undertake at her own expense "to have the supplied drapes drycleaned within the last month of tenancy."

This Clause included the statement that "Receipts must be submitted or you will be charged."

The landlord entered into written evidence a copy of the signed September 1, 2005 joint move-in condition inspection report and the signed August 31, 2010 joint move-out condition inspection report. On this document, the drapes were identified as having been "professionally done" at the commencement of the tenancy. On this document, the drapes were identified as not having been "professionally done" at the end of this tenancy. The cost of repairs noted in this section of the document was "\$95.00." At the bottom of this report, the tenant signed a security deposit statement that allowed the landlord to "Please deduct from my security deposit" an amount of \$95.00.

Although the tenant confirmed that she signed the joint move-out condition inspection report, she said that the landlord provided only a copy of the original report and testified that she did not believe that the signature on the copy of the joint move-in condition inspection report submitted into written evidence was hers.

The parties also entered into written evidence their own copies of a separate security deposit statement prepared by the landlord. The tenant and the landlord's building manager signed this statement on August 31, 2010. In this statement, the tenant agreed to allow the landlord to deduct \$95.00 from her security deposit. This was a pre-determined charge of \$95.00 for drapes in a one bedroom rental unit. Although the tenant signed this security deposit statement, the tenant wrote beside the \$95.00 charge for drapes "Not Acceptable" and initialled this comment. The landlord testified that the landlord's building manager stroked lines through both the tenant's comment and her initial to this objection to this charge after he and the tenant signed this statement. He testified that this is standard procedure within his company if the landlord disagrees with comments attached to the landlord's security deposit statement.

The landlord entered into written evidence a copy of a \$39.20 invoice for drycleaning the drapes in the rental unit on September 2, 2010, a few days after this tenancy ended. He said that the landlord's true costs of obtaining professional drycleaning of the drapes were increased by the cost of taking the drapes to and from the drycleaners and by the administrative costs of paying the bill for this service.

The tenant entered into written evidence an undated move-in condition inspection report that she said she prepared after she conducted her own move-in inspection on September 5, 2008. She said that she tried to obtain a signature from the landlord's building manager at that time but he refused to sign her report. In her report, the "windows, coverings and screens" were shown as dirty with a black mark on the curtain.

The joint move-in condition inspection report provided by the landlord showed the windows and drapes in the bedrooms were good and had been “professionally done.” The landlord testified that the drapes were professionally cleaned before the tenant moved into the rental unit.

The tenant entered into oral and written evidence her assertion that she washed what she described as curtains that covered the windows. She disagreed with the landlord’s claim that the window coverings in question were drapes and required professional cleaning as per the Additional Terms to her Residential Tenancy Agreement.

The landlord entered oral and written evidence that in an April 8, 2011 letter the tenant changed her mind regarding her agreement to let the landlord keep a portion of her security deposit. In that letter, the tenant requested the return of the remaining \$91.82 from her security deposit, later amended by her to \$95.00.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the provision by the tenant of the forwarding address or the end of the tenancy, whichever occurs later.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if “at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.”

In this case, I find that the landlord obtained the tenant’s written agreement on August 31, 2010 to retain \$95.00 from the tenant’s security deposit. Fifteen days after receiving the tenant’s forwarding address in writing and the end of the tenancy, the landlord returned \$533.18 from the tenant’s security and pet damage deposits to the tenant.

Almost seven months later, the tenant apparently changed her mind about the written agreement she had provided to allow the landlord to retain a portion of her security deposit. The landlord applied for dispute resolution to obtain authorization to retain the remaining portion of the tenant’s security deposit within 15 days of receiving the tenant’s April 8, 2011 request to forward this portion of her security deposit to her forwarding address.

At the hearing, I advised the parties that in the absence of any convincing evidence to the contrary I accepted the joint move-in and move-out condition inspection reports entered into evidence by the landlord as validly signed by both the landlord and the tenant. The evidence from these reports and the signed security deposit statement are consistent in that on August 31, 2010, at the end of this tenancy, the tenant gave her written permission to withhold \$95.00 from her security deposit to pay for professional cleaning of the drapes in the bedroom of her rental unit.

In accordance with section 38(4)(a) of the *Act*, I find that the landlord is allowed to retain the remaining portion of the tenant's security deposit because the tenant gave her written consent to do so at the end of this tenancy. I find that the tenant did not comply with the requirement in the Additional Terms attached to her Residential Tenancy Agreement that she have her drapes professionally drycleaned at the end of her tenancy. I reject the tenant's assertion that the window coverings in question were not really drapes. She provided insufficient evidence to make this distinction. She signed a joint move-in condition inspection report referring to the window coverings as drapes that were professionally cleaned when she commenced her tenancy. The landlord has entered written evidence to demonstrate that the landlord did incur costs to have the drapes in the tenant's rental unit professional drycleaned. He also entered oral testimony in support of why the landlord's true costs of looking after this matter escalated from the \$39.90 noted on the invoice to \$95.00, which included provisions for staff time to remove the drapes, get them cleaned, retrieve them from the drycleaners and return them to the rental unit.

Although I allow the landlord's application to retain the remaining portion of the tenant's security deposit, I am concerned by the landlord's oral testimony regarding his company's apparent practice of "stroking out" comments entered by tenants when they sign documents allowing the landlord to keep portions of their security deposits. Altering a document after both parties affix their signatures and date them is a practice that should not be followed if a party is interested in making use of that document in a hearing of this nature. In this case, the landlord's altered security deposit statement provides little support to the landlord's application since by the landlord's own admission the landlord's building manager crossed out that part of the statement that he did not like. Rather, the tenant's comment on this statement lends a measure of credibility to her claim that at that time she had reservations about the document she was signing and the landlord's claim on a portion of her security deposit. The building manager's alteration of a signed document may have disintitiled the landlord to the remaining portion of the tenant's security deposit had there not been two parallel references to the \$95.00 drapery drycleaning charge in the joint move-out condition inspection report that contain no qualifying comments or remarks by the tenant.

Since the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application from the tenant.

Conclusion

I authorize the landlord to retain the remaining portion of the tenant's security deposit plus interest, which I determine to be \$92.35 (i.e., $\$91.82 + \$0.53 = \$92.35$). I issue a monetary Order in the amount of \$50.00 in the landlord's favour.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.