



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of double the security deposit and to recover the filing fee.

The tenant filed this application on July 27, 2011 and served the landlord in person on July 30, 2011 with a copy of the Application and Notice of Hearing.

Both Parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, and in written form, documentary form, 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 recover double her security deposit?

Background and Evidence

Both Parties agree that this month to month tenancy started on May 15, 2011. Rent for this unit was \$945.00 per month and was due on the first of each month. The tenant paid a security deposit of \$472.50 on May 15, 2011.

The tenant testifies that there were two tenants residing in this unit and she had paid the security deposit and the other tenant was supposed to pay the pet deposit by July 01, 2011 but states the other tenant failed to pay this and they ended their tenancy on July 01, 2011. The tenant testifies she gave the landlord her forwarding address in writing on July 04, 2011.

The tenant testifies that she did not attend a move out condition inspection and after speaking with the other tenant she was told she had not attended the inspection but had signed the inspection report. The tenant testifies the landlord did not return the security deposit to her within 15 days of receiving her forwarding address and she seeks to recover double her security deposit. The tenant testifies that she was not given opportunity to attend the move out inspection.

The landlord testifies the other tenant did attend the move out inspection on July 01, 2011 and signed the inspection report agreeing that the landlord may keep the security deposit of \$472.50 for damage to the rental unit. The landlord testifies this tenant was given two opportunities to attend the inspection also but failed to do so. The landlord testifies the tenants cat had damaged the exposed underlay on three stairs, flooring in the unit had been left dirty, a dryer knob had been broken and there were urine stains on one of the bedroom carpets which could not be removed successfully and the carpet will need to be replaced.

A copy of this inspection report has been provided in evidence.

The tenant testifies she disputes the landlord keeping the security deposit as it was her deposit she paid and disputes the landlords' costs for this damage. The tenant testifies she spoke to the landlord on July 01, 2011 and told him she would have the underlay replaced and would have been able to do this at a lesser cost than the landlord has claimed.

Analysis

Section 38(4) of the *Act* says a landlord may retain an amount from a security deposit or a 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 one of the tenants did sign the move out condition inspection report and gave the landlord written permission to keep the security deposit to pay for damages and cleaning. As this happened on July 01, 2011 the landlord is under no obligation to return the deposit or file an application to keep it within 15 days of receiving the tenants forwarding address in writing.

The tenant argues that she was not given opportunity to attend the move out inspection however the landlord argues that only one tenant is required to attend the inspection and opportunity was given twice for the inspection.

I refer the tenant to the Residential Tenancy Branch Policy Guidelines #13 which states, in part, Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord. This also implies that the tenants are jointly able to agree the landlord could retain the security deposit for any damages to the rental unit.

Consequently the tenants' application for double her security deposit is dismissed without leave to reapply.

As the tenant has been unsuccessful with her claim she must bear the cost of filing her own application.

Conclusion

The tenants' application is dismissed without leave to reapply.

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: September 07, 2011.

Residential Tenancy Branch