



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This application initiating this hearing was brought by the tenants on December 21, 2011 seeking a Monetary Order for return of their security deposit in double on the grounds that the landlord did not return it or make application to claim upon it with the latter of 15 days of the end of the tenancy or receipt of the tenant's forwarding address.

Issues to be Decided

This application requires a decision on whether the tenants are entitled to a monetary award for return of the contested portion of the security deposit and whether that amount should be doubled.

Background and Evidence

This tenancy ran from October 1, 2011 to December 1, 2011 when the tenants left the fixed term agreement, set to end on January 1, 2012, early with consent. Rent was \$975 per month and the landlords held a security deposit of \$450.

During the hearing, the parties gave evidence that the move-out condition inspection report had been interrupted when the tenants left abruptly over a disagreement about cleaning that remained to be done.

The landlords stated that one of the tenants had, in her haste to leave, knocked her three-year old child down. In a subsequent discussion over the security deposit, the other tenant agreed that the landlords would deduct an amount for repair of the wood flooring damaged by the tenants and the landlords agreed to waive cleaning costs.

Apparently, the present disagreement arose over a misunderstanding of the amount of money the landlord was to retain. The tenant believed the charge would be in the order of \$40, but the landlord withheld \$150, and returned \$300 which was refused by the tenants leading to their application for return of their security deposit in double.

Analysis

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return a security deposit or file for dispute resolution to make claim against it unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the deposit(s).

However, section 38(2) provides that, "Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section.....36 (1) *[tenant fails to participate in end of tenancy inspection]*."

Section 35 of the *Act* sets out the requirements for completion of a condition inspection report and include the requirement that:

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Section 36 of the *Act* states that:

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
- (b) the tenant has not participated on either occasion.

I find that, by failing to remain for the full move-out condition inspection and failing to sign the condition inspection report form – which allows for agreement or disagreement with the contents – the tenants failed to meet their obligations under section 35 of the *Act* and their right to return of the deposit is extinguished under section 36 of the *Act*.

Residential Police Guideline 17(3) states at clause 4 that, under such circumstances, “...while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the *Act*.” This would permit the landlords to make application for damages and the deposit or portion of it would be set off against the landlord’s claim.

Having found that the tenants’ right to return of the deposit has been extinguished under section 36 of the *Act*, I find that their application for return of it under section 38(6) of the *Act* must be dismissed.

Conclusion

The 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: February 28, 2012.

Residential Tenancy Branch