# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes Landlords: MNSD, FF
Tenants: MNSD, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 23, 24, 35, 36, 37, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenants are entitled to return of all or part of the security deposit and pet damage deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act.*

Background and Evidence

The parties agree the tenancy began in May 2010 as a month to month tenancy with a monthly rent of $800.00 due on the last day of each month with a security deposit of $400.00 and a pet damage deposit of $200.00 paid. They further agree the tenancy ended on August 31, 2011.

The landlord testified that no formal move in condition inspection was completed at the start of the tenancy but rather she asked the tenants to let her know if there were any problems. The landlord further testified that she made several offers to the tenants regarding a move out condition inspection but the tenants refused to participate.

The tenants testified the landlord did not want to complete a move out inspection as new tenants were moving in immediately after these tenants moved out. The tenants stated that they made several attempts to have their deposits returned, but that they did agree the landlord could deduct $120.00 for cleaning.

The tenants have submitted into evidence portions from various text messages in support of their claim. These messages include on partial messages from the landlord. There are no messages from the tenants or complete messages from the landlord.

The tenants submit, in their testimony, that the text messages that they have submitted into evidence outline the landlord was willing to return $200.00 to them and that this amount represented the pet damage deposit. The specific message reads: "....:I had to vacuum the whole place as well. We will settle at 200 and I make more then 30 an hour."

The landlord acknowledges receipt of a letter from the tenants dated September 7, 2011 that provided their forwarding address. The letter itself, states the requested reimbursement includes return of the pet damage deposit. In addition the tenant's breakdown of their claim in their letter dated April 10, 2012 includes a request to return the pet damage deposit as well as the security deposit.

The landlord testified that shortly after the start of the tenancy the tenants gave up their pet and she returned the pet damage deposit to them. The tenants agreed they did give up their pet shortly after moving in but that they have not received the pet damage deposit at all. The landlord provided no corroborating evidence of the return of the pet damage deposit.

Analysis

Section 23 of the *Act* requires the landlord and tenant, at the start of the tenancy, to inspect the condition of the rental unit on the day the tenant is entitled to possession of the unit or on another mutually agreed upon date. The section goes on to require the landlord to provide the tenant with at least 2 opportunities for the inspection and to complete a condition inspection report that must be provided to the tenant.

Section 24 states that the right of a landlord to claim against a security deposit or a pet damage deposit or both, for damage to the residential property is extinguished if the landlord does not provide 2 opportunities or does not complete a report and give a copy to the tenants.

As a result of the landlord's testimony that a move in condition inspection was not completed at the start of the tenancy and despite either party's testimony in relation to the move out condition inspection, I find the landlord extinguished their right to claim the security deposit at the start of the tenancy.

In relation to the pet damage deposit, I accept the testimony of both parties that the tenants paid a pet damage deposit. While I noted in the hearing that the burden of proof lies with the tenants to show they have not received the deposit back, as it is relevant to their claim for return of the deposit, I note that it is an impossible burden to show that something did not happen.

I do not accept the tenants' position that the text message in which the landlord states she will return $200.00 represents only the pet damage deposit, however, as the tenants indicated in both their request to the landlord and in their submissions for this hearing that they were seeking the return of the pet deposit I find the landlord was well notified of the tenant's intent to seek return of the deposit.

Despite being so informed the landlord did not mention anything regarding the return of the pet damage deposit in her written submission or evidence and she did not provide any document that may corroborate her testimony that she had returned the deposit, such as a negotiated cheque or bank statement.

As such, I find there is insufficient evidence before me to establish that the pet damage deposit has ever been returned to the tenants.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the testimony of both parties, I find the tenancy ended on August 31, 2011 and that the landlord received the forwarding address on September 7, 2011 and as such to comply with Section 38(1) the landlord was required to either return the security and pet damage deposits or file an Application for Dispute Resolution seeking to claim against the deposit no later than September 21, 2011.

By failing to do either, I find the landlord has failed to comply with Section 38(1) the tenants are entitled to return of double the amount of both deposits less the amount the tenants have agreed upon for cleaning.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$1,130.00** comprised of $800.00 double the security deposit; $400.00 double the pet damage deposit; and the $50.00 fee paid by the tenants for their application less the $120.00 for cleaning.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As I have found the landlord had extinguished their rights to claim against the security and pet damage deposits for damage to the unit, I dismiss the landlord's Application in its entirety.

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: June 07, 2012.

Residential Tenancy Branch