



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' application for a Monetary Order for return of double the security deposit and other damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

I determined that both parties made late submissions; however, both parties indicated they had an opportunity to review the late submissions of the other party and were agreeable to the inclusion of all late submissions. I accepted and considered all of the submissions provided to me.

Issue(s) to be Decided

1. Are the tenants entitled to return of double the security deposit?
2. Are the tenants entitled to recovery other damages or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced April 22, 2011 and ended May 31, 2012. The tenants paid a security deposit of \$800.00 on April 22, 2011. I was provided evidence of a move-in and move-out inspection report. On May 31, 2012 the tenants authorized deductions totalling \$30.00 on the move-out inspection report and provided their forwarding address on the report.

On June 13, 2012 the landlord issued a refund cheque in the amount of \$308.34 and mailed it to the tenants. The tenants received the refund cheque in the mail on June 18, 2012 but have not cashed it because they did not agree with the amount of the refund. Included with the refund cheque were some receipts and a note explaining that he incurred additional costs cleaning costs which were deducted from the security deposit.

The tenants are of the position they are entitled to return of double the security deposit (\$800.00 x 2) because the landlord made unauthorized deductions from the deposit, did not repay the security deposit or provide a copy of the move-out inspection report within 15 days after the tenancy ended or received the forwarding address; and, altered the move-out inspection report.

The tenants submitted that the move-out inspection was provided to them for the first time with the landlord's evidence package for this proceeding. The tenants were certain the move-out inspection report was not with the refund cheque.

The landlord acknowledged that he altered the inspection report after it was signed by the tenants. The landlord thought he had sent the tenants a copy of the inspection report with the refund cheque but was not entirely certain.

Included in the evidence provided to me for this proceeding were copies of: the tenancy agreement; the move-in inspection report; the landlord's note of June 13, 2012; cleaning receipts; and, the altered move-out inspection report

The tenants also sought compensation for time spent preparing and serving their Application for Dispute Resolution. As costs for preparing or participating in a dispute resolution proceeding are not recovery under the Act, with the exception of the filing fee, I dismissed this portion of the tenants' claim summarily.

Analysis

As the parties were informed during the hearing, since the landlord has not filed an Application for Dispute Resolution the landlord's claims that the landlord incurred additional costs for cleaning and damage were not before me to consider or determine. Rather, the issue to determine under this application is whether the landlord administered the security deposit in accordance with the requirements of the Act. The landlord retains the right to make his own separate application to request compensation for cleaning or damage against the tenants.

Section 36 of the Act and section 18 of the Residential Tenancy Regulations provides that if a landlord does not give the tenant a copy of the move-out inspection report within 15 days of completing the report or receiving the tenant's forwarding address in writing, the landlord's right to claim against the deposit for damage is extinguished.

It was undisputed that the tenancy ended and the tenants provided a forwarding address on May 31, 2012. Accordingly, the landlord had 15 days after May 31, 2012 to give the tenants a copy of the move-out inspection report.

I find, on the balance of probabilities, that the landlord did not give a copy of the move-out inspection report with the refund cheque as he submitted. I make this finding based upon the content of the note that accompanied the partial refund cheque. In the note, the landlord states that he “enclosed” a cheque and “attached” receipts. No mention is made of “enclosing” or “attaching” a copy of the move-out inspection report. Further, I found the landlord’s uncertainty as to whether he gave the tenant’s a copy of the report to be less than convincing during the hearing. Therefore, I find the landlord did not provide the tenants a copy of the move-out inspection report within 15 days after May 31, 2012.

Section 38(4) of the Act provides that a landlord may retain an amount from the security deposit if

- (a) at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant

Section 38(5) of the Act further provides that a landlord may not seek the tenant’s consent for deductions from the security deposit for damage if the landlord’s right to claim against the security deposit has been extinguished.

In interpreting the use of the words “has been” in section 38(5) I find that the landlord loses the right to obtain the tenant’s consent to make deductions for damage after extinguishment has already occurred. In other words, if the right has not been yet been extinguished the landlord has the lawful right to obtain the tenant’s consent for deductions for damage.

In this case, the landlord had obtain the tenant’s agreement, in writing, at the end of the tenancy to retain \$30.00 from the tenant’s security deposit and at the time consent was given the landlord had not yet extinguished his right to obtain such consent. Therefore, I find the landlord had already obtained the lawful right to deduct \$30.00 from the security deposit before extinguishment occurred and he was entitled to retain that amount. Therefore, I find the security deposit less authorized and legal deductions of \$30.00 was to be administered in accordance with section 38(1) of the Act by:

- either repaying \$770.00 to the tenants, or;
- filing an Application for Dispute Resolution claiming against the security deposit;

- within 15 days of the date the tenancy ended or the date the landlord received the forwarding address.

I find the landlord failed to comply with section 38(1) by sending a cheque to the tenants for an amount lesser than \$770.00.

Where a landlord fails to comply with section 38(1), section 38(6) requires the landlord to pay the tenants double the security deposit.

Having failed to comply with section 38(1), I find the landlord is required to pay the tenants double the security deposit. As the landlord failed to comply with section 38(1) with respect to the return of \$770.00 I find that this is the amount to be doubled under section 38(6) of the Act. Accordingly, I award the tenants \$1,540 (\$770.00 x 2).

I further award the tenants recovery of the \$50.00 filing fee paid for this application.

The tenants have been provided a Monetary Order in the total amount of \$1,590.00 to serve upon the landlord and enforce as necessary. Should the tenants cash the cheque already in their possession, the tenants may enforce the remaining balance outstanding only.

Conclusion

The tenants have been provided a Monetary Order in the amount of \$1,590.00 to serve upon the landlord and enforce as necessary.

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: August 30, 2012.

Residential Tenancy Branch