



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenants filed for a monetary order for return of double the security deposit under section 38 of the Act, and to recover the filing fee for the Application.

The Landlord filed for an order to keep the security deposit in partial satisfaction of the claim, for a monetary order for alleged damage or cleaning at the rental unit, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matter

The Tenants filed their Application on or about August 10, 2012, and included some evidence with the Application. However, the Tenants waited until the morning of the hearing to serve the Landlord with two large packages of evidence. Under the Act and rules of procedure, the Landlord should have received the Tenants' evidence no later than five days before the hearing. Therefore, I have not allowed the documentary evidence of the Tenants into evidence, although they were given the opportunity to testify to it during the hearing.

Issue(s) to be Decided

Is the Landlord entitled to the relief sought?

Are the Tenants entitled to return of double the security deposit?

Background and Evidence

This tenancy began in February of 2011. The Tenants paid a security deposit of \$600.00, on or about February 1, 2011. At the outset of the tenancy a condition inspection report was done.

During the course of the tenancy the Tenants informed the Landlord they would like to move into a less expensive rental unit located in the same building. The parties agreed that the Tenants would vacate the subject rental unit and move into their new rental unit on or about July 1, 2012.

The Tenants moved out of the subject rental unit on June 27, 2012. On July 3, 2012, the Agent for the Landlord and the male Tenant performed an outgoing condition inspection report at the subject unit.

The Agent for the Landlord testified that when she went to the rental unit on July 3, to perform the inspection report, it looked like there was nothing done to clean the rental unit. The Agent and the male Tenant agreed that carpet cleaning, drain cleaning, blind cleaning were required, in addition to some other cleaning in the suite. The Agent for the Landlord and this Tenant filled out the condition inspection report indicating that the Landlord could deduct \$470.00 from the security deposit of \$600.00. Both parties signed in agreement to this arrangement.

When the female Tenant returned from work later that day she was upset that the male Tenant had agreed with the Agent to a deduction from the security deposit for cleaning. The female Tenant believed she should have more time to clean the rental unit and did not want the Landlord to make any deductions from the security deposit. The female Tenant tried to argue she was entitled to her own condition inspection report with the Landlord and the report had to be done with both Tenants present.

The Agent for the Landlord gave the Tenants more time to clean the rental unit, although it appears no discussion took place about how this would work.

The parties then disagreed about the extent of the extra cleaning performed by the Tenants. The Agent for the Landlord insisted that the rental unit should be "tenant ready". The Tenants disagreed.

The Agent for the Landlord went to the Tenants on July 16, 2012, and gave them a cheque for \$42.71, as the return of the balance of the security deposit after the \$470.00 was deducted from the \$600.00. The Tenants did not agree to the calculation or the extra deductions, and refused to accept this and filed for dispute resolution. Although they were living in the same building, with the same Landlord, the Tenant testified they gave their forwarding address to the Landlord on July 16, 2012, in writing.

Following the Tenants filing their Application, the Landlord now claims for \$1,602.67 for additional cleaning and repairs made. The Landlord's position is that the Tenants damaged the rental unit beyond normal wear and tear and did not clean the rental unit to be "tenant ready".

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the following.

The Landlord's Claims

The male Tenant performed the condition inspection report with the Agent for the Landlord and therefore, the condition inspection report was performed in accordance with the Act. The female Tenant does not have an independent right to her own condition inspection report, nor do both Tenants have to be present in order for the report to comply with the Act.

Nevertheless, once the Agent for the Landlord and the Tenant performed an outgoing condition inspection report together and signed for the deductions, the extent and cost of the cleaning and damages were agreed to for the subject rental unit. In short, both parties agreed that on July 3, 2012, \$470.00 could be deducted from the security deposit and that was the amount required for cleaning and any damages.

I find that it is not open to the Landlord to now add claims that the rental unit needed further cleaning or repairs than what was indicated in the final inspection report, unless they can prove the Tenants had hidden defects which were not apparent at the time of the inspection. There was no evidence before me the Tenants had hidden anything from the Landlord at the time of the inspection.

The main purpose of the condition inspection reports are to have a before and after occupancy comparison of the condition of the rental unit. The Landlord performed the incoming and outgoing reports and the differences at the end of the tenancy were agreed to by both parties. I find the Tenants were entitled to rely on these reports and it is not open to the Landlord to attempt to circumvent the reports prepared by their Agent and now claim damages which were not evident to the Agent or the Tenants, or indicated in the condition reports.

I also note that under section 37 of the Act the Tenants were required to return the rental unit to the Landlord in a reasonably clean state and undamaged, except for

normal wear and tear. There is nothing in the Act that requires the Tenants to return the rental unit to the Landlord in a "tenant ready" state.

Therefore, based on the foregoing and on balance of probabilities, I dismiss the Application for Dispute Resolution of the Landlord without leave to reapply.

The Tenants' Claims

Under section 38 of the Act, the Landlord had 15 days from the later of the end of the tenancy or receipt of the Tenants' forwarding address in writing, to either return the deposit or file a claim against it. I find the Landlord had the forwarding address in writing on July 16, 2012. In fact, as the Tenants moved within the same building owned by the same Landlord, the Landlord always had the Tenants forwarding address.

The Landlord had written authorization from the Tenants to deduct \$470.00 from the deposit. Therefore, in order to comply with section 38 the Landlord should have returned the balance of the deposit, \$130.00, or filed to keep it, within 15 days of July 16, 2012. The Landlord did not file their Application until August 15, 2012, and therefore is in breach of section 38 of the Act.

The security deposit is held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep a portion or all of the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or as happened here, the written agreement of the Tenants. Here the Landlord did not have any authority under the Act to keep any portion of the balance of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$310.00**, comprised of double the balance of the security deposit (2 x \$130.00), plus the \$50.00 fee for filing this Application.

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible.

The Tenants may deduct this amount from a future rent payment, or request a monetary payment from the Landlord.

Should the Landlord fail to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion

The parties agreed to deductions of \$470.00 from the security deposit of \$600.00. The Landlord failed to return the balance of the deposit to the Tenants or claim against it within the required 15 days of section 38 of the Act.

The Tenants are entitled to double the balance of the security deposit, plus the filing fee for the Application. They are granted a monetary order and may deduct this amount from one month of rent or request a payment from the Landlord.

The Landlord is not able to claim more than what the Tenants agreed to pay at the time of the outgoing condition inspection report, unless the Landlord can prove the Tenants hid defects from the Landlord. There is no evidence of that here. The Landlord's claim is dismissed without leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: October 31, 2012.

Residential Tenancy Branch