



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with a review hearing of the tenant's original Application for Dispute Resolution, seeking a monetary order for return of all or part of a pet damage deposit or security deposit.

On September 6, 2012, Arbitrator A issued a decision granting the tenant a monetary order against the landlord in the amount of \$661.10. The landlord did not attend the hearing, and applied for a review of the September 6, 2012 decision citing that they were unable to attend the hearing, and had new and relevant evidence that was not available at the time of the original hearing.

On October 24, 2012, Arbitrator B suspended Arbitrator A's monetary order dated September 6, 2012, pending the outcome of this review hearing.

The tenant and the tenant's mother, a landlord and an agent for the landlord attended the review hearing on November 27, 2012. The landlord testified that they did not receive the evidence package from the tenants, and the landlord confirmed they did not serve evidence on the tenants. As a result of the above, the hearing proceeded without the consideration of documentary evidence from either party. This decision will include the relevant oral testimony provided during the hearing from the parties.

Issue to be Decided

- Is the tenant entitled to a monetary order for return of all or part of the security deposit under the *Act*?

Background and Evidence

A month to month tenancy began on April 20, 2008. Monthly rent in the amount of \$500.00 was due on the first day of each month and was reduced with the mutual agreement of the parties in November 2011, to \$480.00 per month. A security deposit of \$250.00 was paid by the tenant at the start of the tenancy.

The tenancy ended by mutual agreement on May 31, 2012. The tenant testified that a forwarding address was provided on June 1, 2012 on a piece of paper hand delivered to the landlord. According to the tenant, on June 1, 2012, the tenant received \$200.00 of his original \$250.00 security deposit after meeting with the landlords.

The landlord disputed the testimony of the tenant by stating they have not received a forwarding address in writing from the tenant, since the tenant vacated the rental unit. The mother of the tenant stated they had a witness, EA, who could testify as to the forwarding address being provided to the landlords. However, the witness confirmed that EA was not present at the hearing and the tenant had not provided a written statement in evidence. As a result, I find the tenant has not submitted any corroborating evidence to support that a forwarding address was provided to the landlords in writing.

The agent for the landlord testified that the full security deposit was not returned as there was a verbal agreement with the tenant for the landlords to retain \$50.00 of the security deposit due to carpet damage. The tenant disputed the agent's testimony by stating that no such verbal agreement was made. The landlord did not submit any evidence to corroborate that a mutual agreement was made, other than to reference a cheque issued to the tenant in the amount of \$200.00.

The agent for the landlord testified that by the action of tenant endorsing the cheque, that action represented an agreement by the tenant that the landlord was permitted to retain \$50.00 of the security deposit. The tenant disputed the testimony of the agent for the landlord. The tenant stated that he cashed the cheque based on a comment from the Arbitrator after the original hearing.

The landlord confirmed that a move-in condition inspection report was not completed at the start of the tenancy, and that a move-out condition inspection report was not completed at the end of the tenancy. The landlord has not filed for dispute resolution claiming towards the security deposit.

Analysis

Based on the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

Tenant's claim for \$250.00 – The tenant has submitted a monetary claim in the amount of \$250.00. The tenant testified that a forwarding address was provided on June 1, 2012 after vacating the rental unit on May 31, 2012. The landlord disputed the tenant's testimony that a forwarding address was provided in writing since the tenant vacated the rental unit, as required by the *Act*.

The tenant's mother mentioned a witness, EA, who was not present at the hearing, and who did not provide a written statement that could have been submitted in evidence. As a result of the above, **I find** the tenant has failed to prove that the landlord breached section 38 of the *Act*, by failing to return the security deposit within 15 days after receiving the forwarding address from the tenant in writing.

I caution the landlord that a security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep 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 an Arbitrator, or the written agreement of the tenant.

I reject the agent for the landlord's position that endorsing the cheque represents an agreement for the landlord to retain \$50.00 of the security deposit. In the matter before me, **I find** that by failing to complete a move-in and move-out condition inspection

report, the landlords breached sections 23 and 35 of the *Act* and as a result, extinguished their right towards the security deposit. Therefore, **I find** the landlords were not entitled to retain any portion of the security deposit, even by written agreement as they had already extinguished any right to claim towards the security deposit for damages.

The original security deposit of \$250.00 has accrued \$2.62 in interest for a total security deposit of \$252.62, and of which \$200.00 was returned to the tenant on June 1, 2012. Based on the above, **I order** the landlord to return the remaining security deposit balance of **\$52.62** to the tenant within 15 days of receiving this decision.

As the tenant had to apply for dispute resolution to seek the return of his security deposit, **I grant** the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$102.62** comprised of \$52.62 owing from the security deposit with interest, and the \$50.00 filing fee. Should the landlord fail to pay the tenant in the amount of **\$102.62**, **I grant** the tenant a monetary order, pursuant to section 67 in the amount of \$102.62. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I set aside the decision and monetary order of Arbitrator A dated September 6, 2012.

Conclusion

I set aside the decision and monetary order of Arbitrator A dated September 6, 2012.

I order the landlords to pay the tenant \$102.62 within 15 days of receiving this decision. Should the landlords fail to pay the tenant, I grant the tenant a monetary order in the amount of \$102.62.

This decision is final and binding on the parties, unless 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: December 5, 2012

Residential Tenancy Branch