



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double his security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on April 1, 2011 at which time the tenant paid a \$580.00 security deposit and that the tenant vacated the unit on October 20, 2012. The tenant wrote his forwarding address on the move-out condition inspection report (the "Report") which was completed on October 20, 2012.

The parties further agreed that when the tenancy began, H.L. was a co-tenant. At some point during the tenancy, the tenant sent an undated letter to the landlord advising that H.L. was no longer a tenant and that the security deposit would be held in his name alone. The landlord testified that she had understood that H.L. had paid at least half of the security deposit and that because she had received no notification from H.L. that she was leaving the unit, she still considered H.L. to be a co-tenant. The landlord testified that she did not return the security deposit to the tenant because she had not yet received a forwarding address from H.L.

On October 20, 2012, the caretaker and the tenant inspected the unit together and the tenant agreed that the landlord was entitled to some compensation because the window coverings were not adequately cleaned. The tenant's testimony around this issue changed as the hearing progressed. The tenant originally testified that the caretaker told him that he had no idea how much it

would cost to clean window coverings. The tenant then testified that the caretaker said it would cost \$200.00 to clean the window coverings. The third time he addressed this issue, the tenant testified that the caretaker told him it would cost between \$150.00 - \$200.00. When asked about this inconsistency, the tenant denied having been inconsistent and repeated his final statement respecting the range of charges.

The landlord submitted a copy of the Report in which the tenant signed the "Security Deposit Statement" section permitting the landlord to deduct \$200.00 from the security deposit. The tenant also submitted a copy of the Report, but his copy showed no amount in the space where the landlord's copy showed \$200.00. The tenant testified that the caretaker left that space blank because he wasn't sure of the charges. The landlord testified that she had spoken to the agent who assured her that he had filled in the amount in front of the tenant.

The Report is a form which is produced in triplicate, with the tenant receiving a carbon copy. It does not appear to have been altered.

Analysis

The answer to the landlord's argument that she does not have to return the security deposit until she receives a forwarding address from H.L. is found in Policy Guideline 13, which provides in part as follows.

Regardless of who paid the [security] deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit ... or may apply for arbitration for return of the deposit.

I find that the tenant has the right to pursue the entire security deposit and that upon receiving his forwarding address, the landlord had the obligation to deal with the entire deposit in accordance with the provisions of the Act.

Section 38(4)(a) of the Act provides that the landlord may retain *an amount* from the security deposit that the tenant agrees in writing that the landlord may retain. I find that "an amount" refers not to a range of potential costs or to a prospective cost to be determined at a later date, but to a specific dollar amount.

Given the tenant's inconsistent testimony, I find it most likely that at the time the Report was completed, the caretaker gave the tenant a ballpark figure for what he thought the costs may be, but I find that he did not fill in the amount on the

report at that time and that it was added later. I have arrived at this conclusion because the tenant's copy of the Report does not appear to have been altered and as the numbers on the landlord's copy are written very close to the blank line available to insert a dollar figure, I find that if the tenant had altered his copy, it would have been apparent as it would have interfered with at least part of that line.

I find that because the caretaker did not write in the Report a specific dollar amount, the tenant cannot be said to have agreed in writing that any amount could be retained.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord received the tenant's forwarding address on October 20, the same day that the tenancy ended, and I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of that date and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit.

Although the tenancy agreement states that the tenant paid a \$580.00 security deposit, because the tenant made an application only for double a \$575.00 security deposit, I find that he is limited to claiming that sum. I award the tenant \$1,150.00. I find that the tenant is also entitled to recover the filing fee paid to bring his application and I award him a further \$50.00 for a total of \$1,200.00.

At the hearing, the tenant agreed that the landlord is entitled to retain \$200.00 as the cost of cleaning window coverings. I therefore find it appropriate to deduct \$200.00 and give the tenant an award for the balance of \$1,000.00.

Conclusion

I grant the tenant an order under section 67 for \$1,000.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 12, 2013

Residential Tenancy Branch

