



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1170 Barclay Street Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant, with an advocate, and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. Neither party provided documentary evidence to the Residential Tenancy Branch in advance of this hearing. The parties were permitted to provide additional evidence after the hearing had concluded. The landlord's agent testifies that evidence was faxed to the Residential Tenancy Office prior to the hearing but agrees the landlord has no evidence it was not sent to the tenant. I have no evidence to prove the landlord's evidence was sent to this office and none has been received prior to or after the hearing. The tenant disputes that he received any evidence from the landlord, prior to this hearing.

Issue(s) to be Decided

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The parties agree that this tenancy started on November 15, 2013 for a fixed term of 3.5 months. The tenancy reverted to a month to month tenancy for the last month. The tenant vacated the rental unit on March 30, 2013. Rent for this unit was \$1,350.00 per month and was due on the 1st of each month. The tenant paid a security deposit of \$675.00 on November 15, 2012. No move in inspection reports were completed at the start or end of the tenancy. The tenant provided a forwarding address in writing on April 24, 2013.

The landlord's agent testifies that the addendum to the tenancy agreement states that any utilities in excess of \$20.00 per month must be paid by the tenant. The landlord's agent testifies that at the end of the tenancy the landlord calculated how much the tenants utilities were in excess each month and found this to be \$60.95 for BC Hydro and Fortis gas plus \$303.19 for water sewage and heat.

The landlord's agent testifies that they did not give the tenants copies of these utility bills or a written demand for payment as the tenant had agreed to pay any excessive amounts when the tenant signed the tenancy agreement.

The landlord's agent testifies that the tenancy agreement also states that the landlords will clean the unit at the end of the tenancy and therefore the landlord seeks to recover \$100.00 for cleaning costs. The landlords agent testifies that the tenant was also charged \$50.00 for two late payments of rent. These amounts including the utilities of \$514.12 were deducted from the tenant's security deposit and the balance of \$160.88 was returned to the tenant.

The tenant disputes the landlords claim. The tenants advocate testifies that after the tenant vacated the unit the tenant went to the landlord's office on April 01, 2013 to claim his security deposit. At that time the landlord's agent informed the tenant that deductions had been made from the deposit for utilities, cleaning and pet cleaning. The

tenants advocate testifies that the tenant did not agree to any deductions being made however the landlord gave the tenant a cheque for the balance of the security deposit of \$160.88 with a list of the deductions. The tenants advocate testifies that this deduction list shows deductions were made of \$100.00 for cleaning; \$60.93 for BC Hydro and Fortis; \$50.00 for a pet cleaning fee; and \$303.19 for utilities (water, sewer and heat). The tenants advocate testifies that when the tenant informed him of the deductions the landlord had made, the tenants advocate wrote to the landlords on the tenant's behalf requesting that the balance of the security deposit be returned to the tenant. The tenant has provided a copy of the deduction letter received from the landlord.

The tenants advocate testifies that the tenant has never been given any copies of utility bills and while the tenant does not dispute that he owes some utilities, the tenant has a right to see the utility bills before the tenant agrees to pay them.

Analysis

I have carefully considered the sworn testimony before me. I refer the parties to Section 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on April 26, 2013. As a result, the landlord had until May 11, 2013 to return the tenants security deposit or file an application to keep it. The landlord did file an application to keep the security deposit and as part of this application is for unpaid utilities then the landlord has not extinguished their right to file the claim even though the condition inspection reports were not completed.

However a landlord must not make any deduction from a security deposit unless the tenant has agreed in writing that the landlord may deduct all or part of the security deposit to cover a liability of the tenant. The tenant agrees that there is a possible amount outstanding for utilities however the tenant has a right to see the utility bills before any payment towards them is made and as the landlord has not provided copies of the utility bills to the tenant with a written demand for payment within 30 days in accordance with s 46(6) of the Act; I find the landlord is not entitled to keep part of the security deposit for these utilities until such a time the bills and a demand for payment is provided to the tenant.

Furthermore I direct the landlord to s. 32(2) of the Act which states:

32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

A tenant has a right to clean the rental unit at the end of the tenancy in accordance with this section of the *Act* and if the landlord has included any other terms in the tenancy agreement such as 'the landlord will clean the unit at the end of tenancy' then that term is considered to be in violation of the tenants right to leave the rental unit in a reasonable clean condition and is therefore considered to be an unconscionable term and is not enforceable. Consequently, I find the landlord has not shown that the tenant did not leave the rental unit in a reasonably clean condition and the tenant's right to clean the unit was taken from the tenant.

I find the landlord is not entitled to keep the tenants security deposit.

Conclusion

The landlord's application is hereby dismissed in its entirety without leave to reapply.

The landlord is at liberty to file an application for unpaid utilities if the tenant fails to pay the utilities after a copy of the bills are provided to the tenant with a written demand for payment within 30 days.

I HEREBY ORDER the landlord to return the balance of the tenant's security deposit of **\$514.12**. A copy of the tenant's decision will be accompanied by a Monetary Order for this amount. The order must be served on the landlord and is enforceable through the Provincial Court 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: July 26, 2013

Residential Tenancy Branch