



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenants applied for return of double the security deposit. The landlord applied for a Monetary Order for compensation for damage and cleaning; and, authorization to retain a portion of the security deposit. 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.

Issue(s) to be Decided

1. Are the tenants entitled to double the security deposit?
2. Has the landlord established an entitlement to recover the amounts claimed for cleaning and damage?

Background and Evidence

The tenancy commenced May 1, 2012 and the tenants paid a security deposit of \$900.00 and a pet deposit of \$250.00. The parties participated in a move-in and move-out inspection together. On May 1, 2013 one of the tenants signed the move-out inspection report indicating she agreed with the landlord's assessment of the condition of the property. A copy of the signed inspection report was given to the tenant. The signed document provided to the tenant indicates the tenant did not authorize any amount to be deducted from the security deposit and the tenant's forwarding address is left blank.

Later on May 1, 2013, the tenant informed the landlord of her forwarding address by way of a text message. Also, the landlord obtained quotes for cleaning and widow covering re-installation in the amount of \$450.00; and, garbage removal in the amount of \$50.00. The landlord inserted these amounts into the security deposit section of the move-out inspection report even though it had already signed by the parties.

On the following day, the landlord texted the tenant to inform her of the amounts she was quoted. The tenant responded, by text, indicating the amounts the landlord wanted to deduct from the deposit were too high and requested an itemized list of items requiring cleaning. The landlord responded by referring the tenant to the condition of the house as reflected on the move-out inspection report the tenant had signed. When the tenant did not respond the landlord proceeded to process a refund cheque dated May 8, 2013 in the amount of \$650.00.

The tenants were of the position that the tenants did not authorize a deduction of \$500.00 from the security deposit and they are entitled to double the entire amount of the \$900.00 security deposit. The tenants confirmed they have since cashed the refund cheque in the amount of \$650.00.

The landlord was of the position that since the tenant did not respond to the landlord's last text message but had agreed to the landlord's assessment of the property at the time of the move-out inspection a deduction of \$500.00 was made as it was supported by quotes and allowed for a refund of the balance of the deposits to the tenants as soon as possible.

The landlord submitted receipts in support of the actual costs to clean, reinstall the window coverings, and remove garbage. The receipts total \$512.25 although the landlord is only claiming the \$500.00 as originally quoted to the tenants and deducted from the security deposit.

The tenants responded to the landlord's claims by stating the cleaning charge is high when compared to compensation the tenant has received for cleaning other houses of similar size. The tenants also pointed out that certain areas, such as the basement and laundry area, were not very clean when they moved in.

The landlord pointed out that the tenant had acknowledged that cleaning was required on the move-out inspection report and that at the time of the inspection abandoned furniture was still in the unit. The landlord was of the position the amounts paid by the landlord were not unreasonable in the circumstances.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to each of the applications before me.

In order for a landlord to make deductions from a security deposit or pet deposit, the landlord must have the tenant's written consent to make the deduction, provided neither part has otherwise extinguished their right to claim the deposit. In his case, I was not presented evidence to suggest either party had extinguished their right to claim the security deposit at the time of the move-out inspection. Where a tenant does not give consent for a landlord to make deductions, the landlord's remedy is to the authorization of an Arbitrator by filing an Application for Dispute Resolution.

In this case, the tenant signed the security deposit section of the move-out inspection report when there were no amounts included in the parts that provide for deductions. Nor did the tenant provide written consent for the landlord to make deductions at any other time. It is important for the landlord to appreciate that a tenant's silence to the landlord's request for consent does not constitute written consent. Therefore, as submitted by the tenants, I find the tenants did not authorize the landlord to make any deductions from the security deposit.

Furthermore, altering a document after it is signed by the parties in order to give the appearance that a tenant has authorized deductions from a security deposit is a fraudulent action. However, upon hearing from the landlord during the hearing, I am satisfied that the landlord's actions were more likely the result of ignorance rather than malicious intent and I am satisfied the landlord is unlikely to repeat this mistake.

By filing the landlord's Application for Dispute Resolution the landlord is now seeking authorization to deduct \$500.00 from the tenants' security deposit and I continue to consider that request.

The Act requires that a tenant leave a rental unit reasonably clean, undamaged and vacant, which includes removing their garbage and discarded possessions. The Act does not exempt the tenant from complying with the requirement to leave the unit reasonably clean. Rather, if there are cleanliness issues at the start of the tenancy the tenants should raise this as an issue with the landlord at that time. Where a tenant does not leave the rental unit reasonably clean, vacant, or undamaged, the landlord has the right to recover its losses from the tenant to rectify these issues.

The Act provides that a condition inspection report completed in accordance with the Act and Regulations is the best evidence as to the condition of the rental unit. I have reviewed the condition inspection report as submitted by the tenants since they have an unaltered version of the report.

Upon review of the move-out inspection report and in consideration of the tenants' testimony that the rental unit did require additional cleaning, and undisputed testimony that there was garbage left behind and window coverings that required re-installation, I accept the tenants failed to leave the rental unit reasonably clean, reinstall window coverings, and remove garbage and abandoned possessions.

I have accepted the receipts and invoices provided by the landlord reflect the actual amount paid by the landlord for cleaning, window covering and garbage removal. The tenants submitted the amount paid for cleaning was too high.

Where a tenant submits that a landlord's claim for cleaning or repairs is excessive, the tenant has the burden to prove the amount claimed by the landlord is unreasonably high. I accept that there is often a range of amounts that contractors will charge. While the tenant may have been paid less for cleaning services than that paid to the landlord's cleaning person, I find the tenant's submissions do not satisfy me that the amount claimed by the landlord was outside of a reasonable range for similar services.

In light of the above, I grant the landlord's request to recover \$500.00 from the tenants. I authorize the landlord to retain this amount from the security deposit.

With respect to the tenants' request for double the security deposit I find the tenants were not entitled to return of double at the time of making their claim. As the parties were informed during the hearing, a landlord has 15 days to take action with respect to the security deposit. The 15 day time limit starts the day after the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, which ever date is later. In this case, the tenants gave the landlord an address via text message on May 1, 2013. The tenants did not provide the landlord with a forwarding address in any other way.

Where a document is to be given to another party, the Act requires that a party give the document to the other party in one of the ways permissible under section 88 of the Act. Section 88 of the Act does not recognize or permit a party to give a document using text messaging. While sending text messages is very convenient and it conveys information I consider text messaging akin to leaving a message on voice mail. While information is conveyed using these methods of communication neither one is sufficient for satisfying service requirements of section 88 of the Act. Therefore, I find the tenants had not provided their forwarding address to the landlord, in writing, in a manner that complies with section 88 of the Act prior to filing their Application for Dispute Resolution.

Considering the tenants have received \$650.00 of their deposits and I have authorized the landlord to retain \$500.00 of the tenants' deposit I find the deposits have been disposed of and the landlord sufficiently compensated for its losses.

I make no award for recovery of the filing fee paid by either party as I find both parties contributed to this dispute.

Given all of the above, I do not provide a Monetary Order to either party and I consider this dispute fully resolved.

Conclusion

The tenants' request for double the security deposit has been denied. The landlord has been authorized to retain \$500.00 of the tenants' security deposit. As the balance of the deposits has already been refunded to the tenants I make no further award to either party.

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 22, 2013

Residential Tenancy Branch

