



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenants seeking the return of double their pet and security deposits. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Are the tenants entitled to the return of double their security and pet deposits?

Background and Evidence and Analysis

Both parties agree to the following:

The tenancy began on or about September 1, 2012 and was to be for a fixed term that would end August 31, 2014, however the tenants vacated the unit on June 30, 2013. Rent in the amount of \$1495.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$748.00 and a pet deposit of \$747.50. A move in condition inspection report was conducted but not a move out condition inspection report.

As the tenants are the sole applicant in this matter I will address their claim and my findings as follows:

Tenants Claim – The tenants stated that on May 31, 2013 they provided notice to the landlord that they would be moving out at the end of June 2013. The tenants stated that they provided the landlord with 79 prospective tenants but the landlord did not find any of them suitable. The tenants stated that they provided their forwarding address on June 19, 2013 by e-mail and then again on July 22, 2013 by registered mail. The tenants stated that they at no time agreed to relinquish their deposits.

The landlord stated that the tenants broke the lease and therefore relinquished their deposits. The landlord stated that the tenants had agreed to that clause in writing and that the landlord decided to exercise that option. The landlord stated that he required the assistance of property manager and that the costs were more than the deposits posted. The landlord stated that he “didn’t feel a move out inspection was required since I decided to exercise my option to retain the deposits”.

The landlord was relying on the tenants “written consent” that he was entitled to retain the deposits if any damage or loss of revenue was incurred. The landlord stated that he did not conduct a move out inspection report so the status of the unit at move out is unknown and that the unit was re-rented for July 1, 2013 removing the claim of any loss of revenue. The landlord is relying on section 4 of the standard tenancy agreement issued by the Branch however the landlords’ interpretation is incorrect. The landlord is of the position that he is automatically entitled to the deposits however section 20 of the Act addresses that issue as follows:

A landlord must not do any of the following:

(e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

On that same page of that form it is clear that the landlord must conduct a move in and move out report and the consequences of not doing it.

Condition Inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
- (b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

The landlord has failed to comply with the terms of his own tenancy agreement and those of the Act and based on the Section 38 of the Act as listed above must return double the security and pet deposit to the tenant. The tenants are entitled to the return of double their security and pet deposit. As stated earlier this decision will address the claim of the tenants only. The landlord made reference to costs incurred about re-renting the unit. The landlord is at liberty to file his own application if he so chooses to pursue any claims that he and the tenants are unable to resolve.

As for the monetary order, I find that the tenants have established a claim for \$2991.00. The tenants are also entitled to recovery of the \$50.00 filing fee. I grant the tenants an order under section 67 for the balance due of \$3041.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$3041.00.

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: November 12, 2013

Residential Tenancy Branch

