



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kone Construction Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover the security deposit?

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this month to month tenancy started on November 01, 2010. The tenancy ended on May 31, 2013. Rent for this unit was \$600.00 per month and was due

on the first day of each month in advance. The tenant paid a security deposit of \$300.00 and pet deposit of \$100.00 on October 18, 2010. The parties also agree that they took part in a move in condition inspection at the start of the tenancy.

The tenant testifies that the landlord has failed to return the security and pet deposit within 15 days of receiving their forwarding address in writing. The tenant testifies that the forwarding address was provided to the landlord by registered mail on June 12, 2013 when the tenant returned the keys to the unit. The tenant has provided a copy of the letter containing the forwarding address in evidence. The tenant therefore seeks to recover double the security deposit from the landlord. The tenant testifies that the landlord has made unauthorised deductions from the security deposit.

The tenant testifies that the landlord did not do a move out inspection with the tenant at the end of the tenancy. The tenant had everything moved out prior to May 31, 2013 and returned on May 31, 2013 to find the landlord had already ripped out the carpets. The tenant testifies that the landlord has provided no evidence to show that the carpets or other areas of the unit were left in a mess. The tenant agrees that a bedroom blind was torn by the tenant's cat and therefore the tenant agrees orally at the hearing that the landlord may deduct the cost for replacing this blind from the security or pet deposit.

The landlord agrees that he received the tenants forwarding address on June 14, 2013. The landlord testifies that the security deposit was not returned as the carpets had to be replaced due to the smell of cat urine. The tenant had cleaned the carpets twice but the smell still pervaded the unit. The tenant also left the bathroom ceiling damaged, a light fixture was broken, a blind was torn and the kitchen was dirty. The landlord testifies that this work came to more than the security and pet deposit held so the landlord kept the deposits to pay for the work. The landlord testifies that the replacement blind cost \$60.00.

The tenant agrees to pay \$60.00 from the security or pet deposit for the replacement blind.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* 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 and pet 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 and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Sections 35(3) of the *Act* require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. The landlord must arrange the inspection with the tenant on the last day of the tenancy or on another mutually agreed day before new tenants move into the rental unit. In failing to complete the condition inspection when the tenant moved out, I find the landlord contravened s. 35(3) of the *Act*. Consequently, s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security or pet deposit for damages is extinguished.

When a landlord's right to claim against the security and pet deposit has been extinguished the landlord must return the security and pet deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing. Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on June 14, 2013. As a result, the landlord had until June 29, 2013 to return all of the tenant's security and pet deposit. As the landlord failed to do so, the tenant has established a claim for the return of double the security and pet deposit to an amount of **\$800.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

As the tenant has orally agreed at the hearing that the landlord may deduct the sum of **\$60.00** from the deposits for the cost of replacing the blinds, I have deducted this amount from the tenant's monetary award.

The tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$790.00**. The order must be served on the Respondent 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: November 06, 2013

Residential Tenancy Branch

