



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application under the *Residential Tenancy Act* (the “Act”) by the Tenants for a monetary order for return of double the security and pet damage deposits paid to the Landlord and for the return of the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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Issue(s) to be Decided

Has there been a breach of section 38 of the Act or the tenancy agreement by the Landlord?

Background and Evidence

The parties entered into a written, statutory form tenancy agreement January 3, 2013, with a fixed term of one year to run from February 1, 2013 to January 31, 2014. The Tenants paid the Landlord a security deposit of \$625.00 and a pet damage deposit of \$625.00 on January 3, 2013 (jointly referred to as the “Deposits”). I note that the tenancy agreement had an addendum incorporated into it, and clause 14 of the

addendum contains a clause about forfeiting the security deposit if the fixed term tenancy was ended by the Tenants prior to the lease.

During the hearing it was explained to the parties that this clause was not a liquidated damages clause and in fact the way the Deposits were to be dealt with was outlined in the tenancy agreement between the parties. I note that the parties are not able to contract outside the Act and therefore any clause requiring automatic forfeiture of the Deposits would be void as it is contrary to the Act.

In or about July of 2013 the Tenants requested that the lease be terminated, effective August 31, 2013. The parties exchanged correspondence by email and discussed subletting the rental unit and the liabilities of the Tenants for any loss of rent and the cost of re-renting the unit. I note that for some period of time during this tenancy the Landlord was represented by an Agent, although the Tenants corresponded with the Landlord. I also note the Tenants state they discussed their situation with information officers at the Residential Tenancy Branch.

The Tenants vacated the premises on August 31, 2013, and the Landlord had new renters take possession of the rental unit on September 1, 2013.

During the course of the move out inspection the Tenants signed the condition report indicating that the Landlord could retain the security deposit of \$625.00. The Tenants provided their forwarding address in writing to the Landlord and the Landlord sent them a cheque in the amount of \$625.00 for the return of the pet damage deposit. The Tenants agreed that they received this cheque on September 10, 2013, although they had not cashed it at the time of the hearing.

The Tenants testified that when they signed the condition inspection report allowing the Landlord to retain \$625.00 they understood it was for the cost of re-renting the unit due to them ending the lease early. However, the Tenants further testified that they signed this over to the Landlord on the condition that the Landlord provide them with a receipt that showed this amount had been paid to the Agent for the Landlord.

In reply, the Landlord testified that there was no condition that she agreed to, which required her to provide the Tenants with proof of the cost of re-renting the unit.

The Landlord agreed the Tenants requested a receipt showing this cost was incurred by the Landlord. The Landlord testified they requested the receipt and she attempted to get this receipt to them within 15 days of the end of the tenancy. She testified she had

this receipt on September 13, 2013, although she did not expedite delivery of it to the Tenants. She sent it out on Monday September 16, 2013.

In evidence the parties submitted a significant number of pages of correspondence exchanged between them via email. The relevant correspondence is set out below.

The Tenants wrote to the Landlord on September 12, 2013, and stated, “When we agreed to you keeping \$625.00 it was under the condition that you provided us with a receipt for that cost of re renting. You have until the end of today to get it to me by email or fax or we will go through the residential tenancy board for double the deposits. My fax number is [*withheld for privacy reasons*]. Do not come in to my place of work.” [Reproduced as written.]

The Landlord replied on September 12, 2013, “For the record, there were no “conditions” to signing Box 2 of the End of Tenancy Condition Report where you agreed to my withholding the security deposit.” The Landlord goes on to explain that she is not clear on what the Tenants are requesting in terms of a receipt, although she is willing to supply them with a document showing the cost of re-renting. She refers to her Agent if the Tenants want a copy of a receipt showing they paid the deposits.

The Tenants filed their Application for return of double the Deposits on September 13, 2013, 13 days after the tenancy ended.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or

tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the above, the testimony and evidence, and on a balance of probabilities, I dismiss the Application of the Tenants without leave to reapply.

I find the Tenants have failed to prove the Landlord breached the *Act*, regulations, or tenancy agreement. I find the Tenants breached the fixed term tenancy agreement and agreed in writing that the Landlord could retain the \$625.00 security deposit as compensation for their breach.

I find the Tenants failed to meet the onus to prove there was a “condition” agreed to between the parties that they would only sign over the deposit if the Landlord provided them with proof of the cost of re-renting. Furthermore, such a receipt from the Landlord is not required under the *Act* or the tenancy agreement between the parties.

I also find that within the required 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, the Landlord returned the pet damage deposit to the Tenants.

The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the Tenants.

Here the Landlord had the written authority of the Tenants to keep the security deposit.

Therefore, I do not find the Landlord has breached section 38 of the *Act*, or the tenancy agreement between the parties.

Conclusion

The Tenants’ Application is dismissed without leave to reapply.

The Tenants failed to prove the Landlord breached the *Act* or the tenancy agreement.

The Tenants gave the Landlord written authority to retain the security deposit and the Landlord returned the pet damage deposit within 15 days as required under the Act and tenancy agreement.

The only evidence of a breach of the Act or the tenancy agreement before me was that of the Tenants in breaking a fixed term tenancy agreement.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 19, 2013

Residential Tenancy Branch

