



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHAUGHNESSY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of a conference call in response to an application made by the tenant for the return of all or part of the pet damage and security deposit.

An agent for the landlord and the rental suite building manager appeared for this hearing along with the tenant. No issues in relation to the service of the hearing documents and documentary evidence under the Residential Tenancy Act (referred to as the "Act") were raised by any of the parties.

Both parties provided affirmed testimony during the hearing and documentary evidence prior to the hearing, all of which has been carefully considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to the return of double the amount of the security deposit?

Background and Evidence

The landlord's agent and tenant agreed that the tenancy started on June 16, 2010 for a fixed term of one year after which it continued on a month to month basis. A written tenancy agreement, provided as evidence for this hearing, was completed by the landlord and tenant at which point rent was established at \$850.00, payable by the tenant to the landlord on the first day of each month. The tenant also paid a security deposit of \$425.00 to the landlord on May, 25, 2010. The tenant and landlord completed a move-in condition inspection on June 11, 2010.

The tenant testified that the tenancy ended at the end of September 30, 2013 and that the landlords had been provided with the tenant's forwarding address two weeks prior to the tenancy ending on this date. The landlord's agent confirmed that they had received the tenant's forwarding address in writing on September 5, 2013.

The landlord's agent and tenant confirmed that a move-out condition inspection was completed at the end of the tenancy on September 30, 2013. During the inspection the landlord noticed some scratches to the bedroom floors. The landlord's agent testified that they informed the tenant at this point that they would be charging her for this damage.

The tenant testified that she disagreed with the damage and told the landlord that she would speak with the manager of the building to see if she could see the move-out inspection report of the previous renters and determine if the scratch was there at the end of their tenancy. The tenant signed a document to this effect during the move-out inspection which was provided as evidence by the landlord.

The landlord's agent testified that the tenant made no attempts to speak to the building manager about the scratches instead choosing to make her application for the return of her security deposit without discussing the issue. The landlord provided text messages showing that the tenant did not consent to the damages and three days later the landlord sent the tenant a text message stating that the tenant had not spoken to the building manager and therefore the security deposit was going to be returned to the tenant with a deduction for the scratches.

The landlord testified that, after making the deduction of \$315.00 for the scratches, the remaining balance of \$110.00 was returned to the tenant in the form of a cheque sent on October 15, 2013. The tenant confirmed receipt of the cheque on October 28, 2013 and confirmed that she had cashed the cheque and received the \$110.00.

The landlord's agent testified that the tenant had postponed the move-out inspection in order to consider her position on whether she was going to consent or not. The landlord also provided the move-in and move-out inspection reports which show that they were completed and signed by both parties who were present during the inspections.

Analysis

The landlord provided a notice, completed by the tenant, as evidence for this hearing that the tenant had postponed the move-out inspection. However, I find that this was not the case. The move-out condition inspection was completed by the landlord and tenant as evidence by the signed condition inspection reports submitted as evidence. As a result, I find that the tenant did not extinguish her right to the return of her security deposit. After considering the evidence and intent of both parties in relation to this document, I find that the document completed by the tenant was intended to inform the

landlord that the tenant was going to take some time to consider whether she was going to consent to any deduction of her security deposit.

However, section 38(1) of the Act states that, within 15 days of the landlord receiving the tenant's forwarding address in writing after the tenancy ends, the landlord **must**: repay the security deposit back to the tenant; make an application to claim against it; or seek the tenant's consent in writing to make a deduction.

Based on the testimony of both parties, I accept that the landlord was provided the tenant's forwarding address before the tenancy ended and that this was done in accordance with the Act by the tenant. Therefore, the landlord had until 15 days after the day the tenancy ended, namely October 15, 2013, to deal with the tenant's security deposit in accordance with section 38(1) of the Act detailed above.

The landlord testified that she did not make the application within the 15 days because she was waiting for the tenant to get back to her regarding her consent to make the deduction but the tenant failed to get back to her and made no efforts to contact the building manager in order to make her decision.

However, I find that this is not a reason for a landlord not to comply with the Act in relation to the return of a tenant's security deposit. Instead the landlord should have made the application within the 15 days if she had not received an answer or written consent by the tenant to make the deduction. Instead the landlord chose of her own accord, to make the deduction and return the remaining amount back to the tenant. This course of action is not pursuant to the Act.

Section 38(6) of the Act states that if a landlord does not comply with the above, the landlord **must** pay the tenant double the amount of the deposits. Therefore, the tenant is entitled to the return of double the amount of the \$425.00 security deposit paid at the start of the tenancy, totaling \$850.00. As the landlord has already returned \$110.00 to the tenant, the total amount awarded to the tenant is \$740.00.

Conclusion

For the reasons set out above, I grant the tenant a Monetary Order, under section 67 of the Act, for the balance due of \$740.00. This order must be served on the landlord and if the landlord fails to make the payment, the tenant may enforce the order in the Small Claims 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: January 23, 2014

Residential Tenancy Branch

