



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes SD

Introduction

This hearing dealt with an application by the tenant for a monetary order for double her security deposit and to recover her RTB filing fee.

The tenant and an agent of the landlord both participated in the teleconference hearing and both gave affirmed evidence. Two witnesses for the tenant also attended and gave affirmed evidence.

Issue(s) to be Decided

Is the tenant entitled to a return of her security deposit?
Is the tenant entitled to receive an amount double her security deposit from the landlord?

Background and Evidence

The parties agree they entered into a fixed-term tenancy agreement starting May 1, 2013 and ending October 31, 2013 whereby the tenant was obligated to pay \$850.00 rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$425.00.

The tenant gave evidence that she and the landlord conducted a walk-through inspection on the day she moved in, but they did not complete a Condition Inspection Report. The tenant said she observed the rental unit had some wear and tear and a bulb in the bathroom fixture was out. She and the landlord did not comment on the bathroom bulb.

The tenant's father gave evidence that he observed the condition of the rental unit when the tenant moved in. He says he noted that a bulb in the bathroom fixture was broken with the base of the bulb stuck in the socket.

The tenant gave evidence that on October 21, 2013, she turned on the bathroom light, heard a "bang/flash" and a bulb flew out of another socket of the bathroom light fixture. She did not inform the landlord at the time, since she felt things were already tense between them. The tenant's position is that she did nothing to damage the bathroom light fixture.

The tenant gave evidence that she moved out October 31, 2013 and has not received her security deposit back from the landlord. The tenant's evidence is that she told the landlord verbally that he could send the security deposit to her parents' address which she had previously provided. The tenant's evidence is that the landlord agreed to do so.

The tenant gave evidence that she requested the landlord conduct a move out inspection with her on October 31, 2013 but he refused. She says she sent him a text message at 4:44 p.m. to tell him she and her sister were finished cleaning. She says the landlord came down to the rental unit but stood with his back to the inside of the rental unit, refusing to come in. She says he told her he would conduct an inspection with his wife after the tenant left. The tenant says she told the landlord she wished to be present for the move out inspection, but the landlord told her that she (the tenant) wanted to make things difficult.

The tenant provided a transcription of an exchange of text messages between herself and the landlord dated December 8, 2013 and January 3, 2014. The tenant's transcription includes the following text messages she says she received from the landlord:

9:54 a.m. Perhaps you never got my last 2 text messages. You left a very large heavy carpet in my walkway that you said someone was gonna pick up that day plus a shit load of garbage in the lane that cost me a phone call from the city plus \$300 service charge from a garbage collector plus a \$50 disposal fee plus a \$150 charge to have an electrician come and fix the lights in the bathroom and an hour and a half to clean the discussing [sic] bathtub. I'm sorry you don't get a damage deposit back unless all that is paid for first. Have your parents call me and I can discuss this with them and provide them with pictures as well if they like.

10:02 a.m. There were 2 bulbs that were hanging broken out of the sockets and I had to call an electrician to repair the sockets. Not to mention I had to repaint 2 walls because of all your tape from hanging paper on the walls peeled the paint. And I told you IN FRONT of your sister that I would inspect the unit later with Deanna and get back to you.

10:02 a.m. You won't be getting a damage deposit back. Sorry.

The landlord's agent gave evidence that the tenant left a rolled carpet outside that became soaking wet in the rain and a quantity of garbage in the lane. He states the landlord incurred costs of \$300.00 for a junk removal service and \$50.00 for dump fees. He states the landlord incurred costs of \$150.00 for an electrician to repair the bathroom light fixture. He states the landlord also had to spend 1.5 hours cleaning the apartment and requests compensation of \$20.00 per hour for a total of \$30.00. The landlord's total claim is \$530.00. The landlord did not make application for dispute resolution to claim this amount.

The landlord's agent says there was no point doing a move out inspection with the tenant because they did not complete a Condition Inspection Report at the beginning of the tenancy.

The tenant states the landlord has not provided receipts to substantiate any of the costs he claims. Further, she says she arranged that someone would pick up the rolled carpet. She says the landlord did not call her to let her know that no one picked up the rolled carpet. She states it would have fit in her car and she would have come back and picked it up if the landlord had called her.

The tenant agrees she left a quantity of useable household items in the lane, but states that most of these were picked up by passersby. She states the remaining items would have fit in the garbage bin.

The tenant says she and her sister cleaned the bathroom thoroughly. She states that if the landlord had made application for dispute resolution to retain any portion of the security deposit, she would have disputed it.

Analysis

I accept the tenant's evidence that the landlord refused to conduct a move-out inspection with her on October 31, 2013.

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, I find the tenancy ended on October 31, 2013. I find the tenant provided her forwarding address in writing to the landlord prior to the end of the tenancy. The landlord did not apply for dispute resolution to make a claim against the security deposit within 15 days. Also, the tenant did not agree in writing to the retention of any part of the security deposit. The landlord is therefore obligated to return the entire security deposit to the tenant.

In addition, the landlord's right to claim against the security deposit was extinguished by Section 36(2), since he did not participate in a move-out inspection with the tenant.

According to Section 38(6), a landlord who fails to follow Section 38(1) must pay the tenant double the amount of the security deposit. In this case, the landlord failed to repay the tenant the amount of \$425.00 from her security deposit. The tenant is therefore entitled to an order for twice that amount, which is \$850.00. The tenant is also entitled to recover her RTB filing fee of \$50.00 from the landlord.

I grant the tenant an order under Section 67 for \$900.00. This order may be filed in Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for \$900.00.

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: March 3, 2014

Residential Tenancy Branch

