



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

The hearing was convened to deal with an application by the tenant for the return of the tenant's security deposit. The application was also convened to hear a cross application by the landlord for a monetary order for damages and to retain the security deposit in satisfaction of the claim.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served on the other party and submitted to the file at the Residential Tenancy Branch at least 5 days in advance of the hearing pursuant to the Act. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing.

Issues to be Decided for the Tenant's Application

- Is the tenant entitled to a refund of double the security deposit paid?

Issues to be Decided for the Landlord's Application.

- Is the landlord entitled to compensation under section 67 of the *Act* for loss of rent and damages?

Background and Evidence

The tenancy began October 1 2012 and ended October 1, 2013. The monthly rent was \$1,100.00. A security deposit of \$550.00 and pet damage deposit of \$550.00 had been paid.

The tenant testified that they gave the landlord a written forwarding address on October 1, 2013. The tenant stated that the landlord sent a refund for the part of the security and Pet damage deposit in the amount of \$650.00, but this cheque could not be cashed due to the fact that the tenant's name was misspelled. The tenant testified that the landlord subsequently sent another cheque to them for \$300.00. The tenant is seeking a refund of double the security deposit and pet damage deposit because the landlord failed to return the deposits within the 15-day deadline under the Act.

The landlord testified that when the tenant vacated, they left the rental unit in need of fumigation, cleaning and repairs. The landlord is claiming compensation of \$801.45 for costs associated with cleaning and repairs.

Submitted into evidence were copies of move-in and move-out condition inspection reports, a page titled "Invoice" with charges for disposal and blind replacement dated October 15, and September 29, 2013, a copy of the tenant's Notice to End Tenancy effective October 1, 2013, dated August 31, 2013, copies of cheques, a copy of a receipt from a pest control company dated September 30, 2013, copies of quotes and copies of communications.

The landlord's position is that the tenant must pay for cleaning and damages that remained when they vacated.

The tenant is disputing all of the landlord's monetary claims.

Analysis – Tenant's Claim for Return of Security Deposit

In regard to the return of the security deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or make an application for dispute resolution to claim against the security deposit.

With respect to the return of the tenant's security deposit, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. Without consent in written form and signed by the tenant, then the landlord has no right to keep the deposit.

I find the tenant did not give the landlord written permission to keep the deposit.

A landlord may keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution and successfully obtains a monetary order to retain the amount from the deposit to compensate the landlord for proven damages or losses caused by

the tenant. However, the landlord must either make the application for dispute resolution or refund the security deposit within 15 days after the tenancy had ended and the receipt of a written forwarding address.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In this instance I find that the landlord had received the tenant's written forwarding address by October 1, 2013 and was thus required to refund the tenant's \$550.00 security deposit and \$550 pet damage deposit by November 15, 2013.

I find that, although the landlord unsuccessfully attempted to refund a portion of the security deposit within 15 days and later did return \$300.00 of the deposit, *after* 15 days, the landlord did not comply with the Act by either refunding the deposits or making an application for dispute resolution within 15 days of receiving the tenant's forwarding address. I find that the landlord's application was not filed until February 18, 2014.

Accordingly, I find that the tenant is entitled to receive a refund of double the \$550.00 security deposit and \$550.00 pet damage deposit in the amount of \$2,200.00 minus the \$300.00 already sent, totaling \$1,900.00.

Analysis – Landlord's Application

With respect to a monetary claim for damages, it is important that the evidence furnished by each applicant/claimant satisfies each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To determine whether or not the tenant had complied with this requirement, I find that this can best be established by comparing the unit's condition as it was when the tenancy began with the final condition of the unit after the tenancy ends. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Completing move-in and move out inspection reports is a requirement under sections 23(3) and section 35 of the Act. The Act places the obligation on the landlord to complete the report in accordance with the regulations.

In addition to the above, section 20(1) states that a condition inspection report completed under section 23 or 35 of the Act must contain certain specific information including the following:

“(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;

(k) the following statement, to be completed by the tenant:

I,

Tenant's name

[] agree that this report fairly represents the condition of the rental unit.

[] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

..... “

I find that the document apparently created by the landlord and put into evidence as move-in and move-out condition inspection reports, does not feature a section that complies with the above excerpt from the Regulation. As a result of the deficiency of the form, I find that the evidentiary weight of the move-in and move-out condition inspection reports have been adversely affected.

However, the landlord has offered verbal testimony and some written material documenting the damages and their alleged expenditures, all of which are being disputed by the tenant.

Due to insufficient evidence from the landlord and inadequate move-in and move-out condition inspection reports, I find the landlord has failed to sufficiently prove what damage actually occurred during the tenancy through the actions of the tenant, beyond expected wear and tear. I therefore find that the landlord's monetary claims fail to fully meet element 2 of the above test for damages.

In addition to the above, I find that the landlord did not furnish sufficient proof of the claimed expenditures. I therefore find that the landlord's monetary claims also failed to satisfy element 3 of the test for damages.

I find that all of the landlord's monetary claims are not sufficiently proven and must therefore be dismissed.

Based on the evidence before me, I find that the total compensation owed to the tenant is \$1,950.00 comprised of \$1,900.00 double the security deposit and pet damage, minus the \$300.00 previously returned and the \$50.00 cost of the application.

I hereby grant the tenant a monetary order in the amount of \$1,950.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's application is dismissed in its entirety without leave to reapply.

Conclusion

The tenant is successful in the application and is granted a refund of double the security deposit. The landlord is not successful in the cross application and the landlord's monetary claims for cleaning and repairs are dismissed without leave.

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 12, 2014

Residential Tenancy Branch

