



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction

This hearing dealt with applications by the landlord to retain the security deposit and by the tenant for the return of double the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the landlord entitled to keep the deposit or is the tenant entitled to the return of double the security deposit?

Background and Evidence

The tenancy began on September 01, 2013 and ended on November 21, 2013. Prior to moving in, the tenant paid a deposit of \$400.00.

The landlord stated that October 06, 2013, the tenant sent her a text message informing her that he would be ending the tenancy effective November 30, 2013. The landlord stated that she requested the tenant to provide notice to end the tenancy in writing and he did not do so.

The tenant stated that he handed over a letter dated October 28, 2013 to the landlord's husband along with his rent for November. The tenant filed a copy of this letter which provides written notice to end the tenancy and also provides a forwarding address. The tenant also added that the landlord had his forwarding address at the start of tenancy, because he let her know that he was returning to the address that he had lived at prior to the tenancy. The tenant also stated that the landlord had a copy of his driver's licence with his forwarding address.

The landlord testified that she did not receive the letter dated October 28, 2013, that the tenant referred to and saw it for the first time when the tenant sent her his evidence package along with a copy of his application and a notice of this hearing. The landlord stated that upon receiving the package, she made her own application to retain the security deposit towards the cost of repair of damages to the rental unit.

The landlord testified that the rental unit was fully renovated prior to the tenancy and was furnished with new appliances and new flooring. The landlord informed the tenant that he needed to use a bath mat and a proper shower curtain to prevent water damage to the laminate flooring. The landlord stated that when she found that the tenant did not follow her instructions; she purchased a bath mat and cleaning supplies for him, for which he reimbursed her. The landlord stated that despite this, the tenant allowed water to remain on the floor which resulted in water damage to the laminate flooring.

The landlord also stated that the flooring in the living room was badly scratched and has provided photographs to support her testimony. The landlord provided a quote to fix the damage which is excess of the security deposit of \$400.00. The landlord offered to accept the security deposit in settlement of her claim.

During the hearing, the tenant did not deny having caused the damage. Throughout the hearing, he maintained that he had provided his forwarding address to the landlord's husband and therefore he was entitled to the return of double the security deposit

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

I must now determine, on a balance of probabilities whether the landlord was provided with the tenant's forwarding address and if so, on the date that it was received by the landlord

The tenant stated that he gave his forwarding address in writing along with his notice to end tenancy, to the landlord's husband. The landlord denied having received it. Other than his word, the tenant did not have any proof of service of the letter containing his forwarding address. The landlord stated that the tenant gave his notice to end the tenancy by text message on October 06, 2014 and it did not have a forwarding address.

The landlord also testified that when she received the tenant's forwarding address, she filed her application to retain the security deposit.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, I find on a balance of probabilities that it is more likely than not that the landlord received the tenant's forwarding address only when he served her with a copy of his application and his evidence package. Therefore, I find that the tenant is not entitled to the return of double the security deposit.

I further find that the landlord has provided adequate evidence to support her testimony that the laminate flooring was new at the start of tenancy and was water damaged at the end of the tenancy. The landlord also filed a quotation to repair it in the amount of \$584.19.

The landlord agreed to accept the security deposit of \$400.00 in full settlement of her claim and therefore I allow the landlord to do so.

Conclusion

The landlord may retain the security deposit of \$400.00.

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: April 08, 2014

Residential Tenancy Branch

