



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DANIEL ISAAC HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord to keep the Tenant’s security deposit and to recover the filing fee for the cost of making the Application.

Two agents for the company (the “Landlords”) named on the Application appeared for the hearing and provided affirmed testimony as well as written and photographic evidence prior to the hearing.

There was no appearance by the Tenant during the 18 minute duration of the hearing and there was no submission of written evidence by the Tenant prior to the hearing. As a result, I focused my attention to the service of the documents by the Landlord.

The Landlords testified that the Tenant had been served with a copy of the Application, the Notice of Hearing documents and their evidence by registered mail on July 21, 2014. The Landlords provided a copy of the Canada Post tracking number as evidence for this method of service. The Landlords also testified that the Canada Post website indicated that the Tenant had received and signed for the documents on July 24, 2014.

Based on the undisputed oral and written evidence, I was satisfied that the Landlord had served the Tenant in accordance with Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”). As a result, the hearing continued in the absence of the Tenant and the Landlords’ undisputed evidence was carefully considered in this decision.

Issue(s) to be Decided

- Did the Landlord deal with the Tenant’s security deposit in accordance with the Act?
- Has the Tenant extinguished their right to the return of the security deposit?

Background and Evidence

The Landlords testified that this month to month tenancy started on July 3, 2012. The Tenant paid a security deposit of \$400.00 on June 28, 2012 which the Landlord still retains. The rent payable under the written tenancy agreement was \$800.00 on the first day of each month. The Landlord completed a move in Condition Inspection Report (the "CIR") with the Tenant at the start of the tenancy.

The Landlords testified that in May, 2014 they received notice from the Tenant that she was ending the tenancy and vacating the suite on June 30, 2014. The Landlords testified that in a written letter provided to the Tenant prior to the Tenant vacating the suite, the Tenant was provided with a list of cleaning instructions and a request for the Tenant to provide availability for a move out condition inspection.

The Landlords testified that the Tenant however vacated the rental suite on June 26, 2014 without prior notice. The caretaker of the building became aware of this and the Landlord attended the rental suite to explain to the Tenant that she tell the caretaker when she was ready to do the move out condition inspection after she had moved out all her belongings and the Landlord would at that point come back to the unit to complete it with her.

The Landlords testified that the Tenant however left the rental suite without making herself available for the inspection. The Landlord explained that the Tenant informed the caretaker that she had a ferry to catch and that she had spoken with a government ministry who informed her that because she was fleeing abuse she did not have to clean the rental suite.

The Landlords testified that they attempted to phone the Tenant to call her back to the suite for the inspection but her phone was out of service. The Landlord then attended the rental suite to find that the Tenant had failed to clean the rental suite and had left them with a forwarding address in writing.

The Landlords explained that they had to clean the rental suite ready for re-rental for 12 hours at a cost of \$25.00 per hour. In support of this, the Landlords provided a copy of the CIR which shows that the rental unit was clean at the start of the tenancy. The Landlords provided an extensive amount of photographic evidence to show that the rental suite was not left clean at the end of the tenancy. The Landlords testified that they had to clean and wash down the walls and floors of the rental suite, remove debris and junk, clean the bathrooms of mould, and clean the kitchen.

The Landlords also provided a typed account of a voicemail message that they had received from the Tenant after she had vacated the rental suite. The Landlords could not trace the number and wrote down what the Tenant was stating on the message. The message indicates that the Tenant denies any responsibility for cleaning the rental suite because she is fleeing abuse.

The Landlords also claimed for unpaid utilities by the Tenant during the hearing which exceeded the Tenant's security deposit. However, the Tenant had not been put on notice for this claim as the Landlord was not aware of the unpaid utilities at the time the Application was made.

Analysis

I accept the undisputed evidence of the Landlord that the Tenant provided a forwarding address in writing on June 26, 2014. As a result, I find that the Landlord made an Application to keep the Tenant's security deposit on July 9, 2014, being within the allowable time limits stipulated by Section 38(1) of the Act.

Section 37(2) of the Act requires a Tenant to leave a rental suite reasonably clean, and undamaged except for reasonable wear and tear at the end of a tenancy.

Section 36(1) of the Act states that the right of a Tenant to the return of the security deposit is extinguished if the Landlord provided an opportunity for the Tenant to attend the condition inspection and the Tenant had not participated. Part 3 of the Residential Tenancy Regulation provides further instructions on how condition inspections are to be arranged and conducted.

In this case, I find that the Landlord took reasonable steps to arrange a move out condition inspection with the Tenant both in writing and on the day the Tenant was moving out her belongings. I also accept the undisputed evidence of the Landlord that the Tenant vacated the rental suite without informing the Landlord, thereby denying the Landlord an opportunity to complete the move out CIR with the Tenant. In accordance with Section 36(1) of the Act, I find that the evidence provided by the Landlord satisfies me that the Tenant extinguished her right to the return of the security deposit.

I accept the Landlord took reasonable steps to contact the Tenant to complete the move out CIR by telephone and the evidence points to the Landlord's submission that the Tenant had no intention of cleaning the rental suite or appearing for a move out condition inspection. I accept the Landlord's undisputed evidence that the Tenant failed

to leave the rental suite in a condition that complied with Section 37(2) of the Act. As a result, the Landlord is entitled to the \$300.00 of cleaning that was required.

As the Landlord has been successful in proving the claim and the Tenant failed to appear for the hearing, I find that the Landlord is also entitled to the Application filing fee in the amount of \$50.00. Pursuant to Section 72(2) (b) of the Act, this amount can be achieved by the Landlord deducting it from the Tenant's security deposit.

Policy Guideline 17 to the Act explains that if the amount awarded to the Landlord from a Tenant's deposit does not exceed the amount of the deposit, the balance may be retained by the Landlord if the Tenant has forfeited the right to its return.

Conclusion

For the reasons set out above, I find that the Tenant extinguished her right to the return of the security deposit pursuant to Section 36(1) of the Act, and therefore there is no requirement for the Landlord to return the Tenant's security deposit which can now be retained by the Landlord.

The Landlord is at liberty to make an Application for unpaid utilities from the Tenant in a separate Application.

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 02, 2015

Residential Tenancy Branch

