



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, OLC

Introduction

This is an application for a monetary order in the amount of \$7800.00 and a request for recovery of the filing fees.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The first thing I dealt with was a matter of the Limitation Act and whether a portion of this claim was outside the basic limitation period for filing a claim, and it is my finding that a large portion of this claim is well outside the time limit..

The applicant became aware of the claims for insurance deductible fees and loss of use and enjoyment for the rental unit in 2011, however she did not apply for dispute resolution to deal with the claims until 2014. The Limitation Act however states:

Basic Limitation Period

- A court proceeding in respect of a claim must not commence more than two years after the day on which the claim is discovered.

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Therefore the only remaining issue to deal with is whether or not the applicant has the right to an order for return of double her security deposit and recovery of her filing fee.

Background and Evidence

The applicant testified that:

- She never gave the landlord any permission to keep any of her security deposit. She negotiated with the landlord and stated that she would be willing to allow the landlord to keep \$100.00 of her security deposit, however the landlord refused that offer, and therefore no agreement was ever reached.
- She specifically stated that she did not agree with the deductions the landlord wanted to make from the security deposit.
- On the moveout inspection report she had signed the box that states she agrees to the following deductions from her security and/or pet deposit, however no amount was put in the box because the landlord told her that she had some paint and would likely just be able to paint over the damage on the walls.
- Therefore since she never agreed to any deductions from her deposit, and the landlord never applied for dispute resolution she believes the landlord should be paying double her deposit.
- The landlord was fully aware by August 6, 2014 that she did not agree to any deductions, and even though forwarding address in writing was sent to the landlord by registered mail on August 11, 2014, the landlord did not apply for dispute resolution.

The respondent testified that:

- When they did the walk-through she did tell the tenant that she could probably do the repair to the wall by just painting over it with some left over paint she had, however she later found out that this would not cover over the damage.
- She got an estimate for the repair that was quite high, however she was able to get them to lower the estimate to \$368.29, and therefore she deducted that amount from the security deposit and E-transferred to the tenant for the remaining \$431.71, however the tenant never accepted the transfer.
- She did find out from the tenant on August 6, 2014 that the tenant did not agree to the deductions and she offered to reduce the amount to \$200.00, with \$600.00 being returned to the tenant, however the tenant still disagreed with that amount and was only willing to pay \$100.00.

- She felt that \$100.00 was unreasonable since the cost to her was going to be \$368.29 to repair the damages caused by the tenant and therefore she did not accept the tenants offer of \$100.00.
- She did not apply for dispute resolution, because she believed that the tenant had given her written permission on the moveout inspection form to retain the security deposit towards the damages based on estimates.

Analysis

It is my finding that the landlord did not have written permission to retain any or all of the tenants security deposit. The box on the moveout inspection report that states that the tenant agrees to deductions has no amount filled in, and therefore at that point no written permission had been given for any particular amount to be deducted from the security deposit.

The landlord and tenant both agree that the landlord stated during the walk-through that the damage could likely just be fixed by painting over it, and therefore it was reasonable for the tenant to expect to receive the majority if not all of her security deposit back.

The moveout inspection report also states that the landlord will get estimates and submit them, and although she did submit the estimates to the tenant, the tenant never agreed to the landlord deducting the amount of the estimate from her security deposit and in fact informed the landlord clearly by August 6, 2014 that she did not agree to any deductions.

Therefore since the landlord did not have any written permission to keep any or all of the security deposit, the landlord was required to apply for dispute resolution within 15 days of the end of the tenancy or the date she received a forwarding address in writing, whichever is the later and the landlord failed to do so.

This tenancy ended on July 31, 2014 and the landlord admits that she received a forwarding address in writing that was sent to her by registered mail on August 11, 2014, however to date she has filed no application for dispute resolution to claim against the security deposit.

Section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date

the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

As stated above the landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a security deposit of \$800.00 and therefore the landlord must pay \$1600.00 to the tenant.

On her application however the tenant stated that she is only requesting double \$700.00, as she had agreed to a \$100.00 deduction.

I therefore allow the applicants claim for \$1400.00 and recovery of the initial \$50.00 filing fee.

Conclusion

I have issued an order for the respondent to pay \$1450.00 to the applicant.

The remainder of this claim is dismissed without leave to reapply, as it is well outside the two-year basic limitation period in the Limitation Act.

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 10, 2015

Residential Tenancy Branch

