



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD

Introduction

There are applications filed by both parties. The landlords seek an order to retain the security deposit. The tenants seek a monetary order for the return of their \$700.00 security deposit.

Both parties attended the hearing by conference call and gave testimony. The landlord, G.H. (the landlord) confirmed receipt of the tenants' notice of hearing package and their submitted documentary evidence. The tenants have confirmed receipt of the landlords' notice of hearing package and their submitted documentary evidence.

The landlord's application identifying Tenant PC (the tenant) seeks an order to retain the \$700.00 security deposit. In the details of the dispute box of the landlord's application, there is only one item selected that appears to relate to the landlord retaining all or part of the security deposit. There is no detailed calculation of how the landlord arrived at this claim.

At the hearing, the landlord indicated that he sought payment for loss of rental income and compensation for damages. I did not find any references to loss of rental income or compensation for damages in the application filed August 13, 2014.

Pursuant to paragraph 59(2) (b) of the *Act*, an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend himself or herself.

I find that the landlord did not sufficiently set out the details of the landlord's application in such a way that the tenant would have known that they needed to respond to that claim of damages or loss of rental income. As such, I find that the landlord's claim for loss of rental income and compensation for damages shall not be considered as part of this decision as it is not properly before me. I make no findings concerning the landlord's claims for loss of rental income or compensation for damages. The hearing dealt with the landlord's application to retain the security deposit, the only issue clearly identified in the landlord's application for dispute resolution. This decision to narrow the scope of the proceedings does not preclude the landlord

from reapplying for the loss of rental income or compensation for damages in a subsequent application.

Issue(s) to be Decided

Is the landlord entitled to an order to retain the security deposit?

Are the tenants entitled to a monetary order for the return of the security deposit?

Background and Evidence

Both parties confirmed that there is a signed tenancy agreement that neither party has submitted. Both parties confirmed that a \$700.00 security deposit was paid by the tenant to the landlord at the beginning of the tenancy. No condition inspections or reports for the move-in or move-out were made by the landlord. Both parties agreed that the tenants provided their forwarding address in writing to the landlord at the end of the tenancy.

The landlord stated that the tenants failed to vacate the rental unit at the end of the tenancy on August 1, 2014 and over-held the rental an extra four days and returned the keys on August 5, 2014. The landlord stated that the tenants did not remove all of their belongings and the landlords have spent over \$4,000.00 repairing the house. The landlord stated that because of damage to the rental property, the landlords were unable to re-rent the property for the month of August. The landlord stated that he was only able to begin advertising the rental property at the end of August 2014 and was successful in re-renting the property as of September 15, 2014.

The tenants disputed the landlord's claims stating that the rental unit was left clean and in good condition at the end of the tenancy and that they had vacated the rental on August 1, 2014.

The landlord applied for an order to retain the \$700.00 security deposit, which included various listed items in his written submissions seeking compensation for cleaning, carpet cleaning, labour, a truck rental and repair work.

The tenants stated that after vacating the rental unit, the landlord did not perform a condition inspection report for the move-out and has failed to return the security deposit within 15 days after the end of the tenancy. The tenants also testified that the damage being claimed by the landlord was present when they moved in.

The tenants seek a monetary order for the return of the \$700.00 security deposit.

Analysis

Section 23 (4) of the Act states that the landlord must complete a condition inspection report in accordance with the regulations. Section 24(2)c) of the Act states that the right of a landlord to

claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord fails to comply with section 23. Similar provisions are in place if a move-out inspection is not conducted or if a report of the move-out inspection is not prepared by the landlord.

Both parties have confirmed that there are no reports for the move-in or the move-out inspections of the rental unit that would provide a comparison of the state of the rental unit between the beginning and the end of the tenancy. On this basis, I find that the landlord has extinguished their rights against the security deposit.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenants' forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenants' security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. In this case, the tenants provided their forwarding address on August 1, 2014 and vacated the rental unit on August 1, 2014. The tenants returned possession of the rental unit to the landlord by returning the keys to the rental on August 5, 2014.

I find that the landlord has not returned the tenants' security deposit in full within 15 days of receipt of the tenants' vacating the rental unit and are subject to section 38(6) of the *Act*.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit with interest calculated on the original amount only. No interest is payable over this period.

Conclusion

I grant a monetary Order to the tenants for \$1,400.00 which allows the tenants to recover their original \$700.00 security deposit plus a \$700.00 monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*.

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 8, 2015

Residential Tenancy Branch

