



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, FF; MNSD, FF

Introduction

This hearing concerns 2 applications:

- i) by the landlord for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee; and
- ii) by the tenants for a monetary order as compensation reflecting the double return of the security deposit / and recovery of the filing fee.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy between the landlord and tenant "MVJ" was from October 01, 2012 to September 30, 2013. Monthly rent was \$1,980.00, and a security deposit of \$990.00 was collected. There is no evidence of either a move-in or move-out condition inspection report having been completed with respect to this term of tenancy.

Thereafter, with respect to the same unit, the fixed term of tenancy between the landlord and tenants "MVJ" and "HEJ" was from October 01, 2013 to September 30, 2014. Monthly rent was \$2,000.00, and it appears that the security deposit of \$990.00 which was paid by tenant "MVJ," was carried forward from the previous term of tenancy to this second term of tenancy with tenants "MVJ" and "HEJ." A move-in condition inspection report was completed by the landlord in the absence of either tenant.

When tenancy ended, a move-out condition inspection report was completed by the landlord in the absence of either tenant. The tenant claims she emailed her forwarding address to the landlord, however, the landlord claims that he only became aware of the tenant's forwarding address after receiving her application for dispute resolution.

Documentary evidence before me in relation to the tenant's having provided the landlord with a forwarding address includes an email from the tenant to the landlord dated December 02, 2014. In her email, tenant "MVJ" informs the landlord that cheque reimbursement of the security deposit dated November 23, 2014 (cheque #125), is being returned, as the cheque is not made payable to her legal name. In this email the tenant provides her forwarding address and requests a reissued cheque.

Subsequently, the tenant returns the landlord's reissued cheque which is also dated November 23, 2014 (cheque #028), as it is made out to tenant "MVJ" as well as tenant "HEJ." By email to the landlord dated March 26, 2015, tenant "MVJ" again provides her forwarding address and requests that the landlord reissue yet another cheque, but one made payable only to her, and not both tenants.

There is no evidence before me concerning exactly how and when the tenant initially provided the landlord with her forwarding address, such that he was able to mail the above cheques to her. The tenants' application was filed on November 04, 2014, and the landlord's application was filed on December 08, 2014. The landlord testified that when tenancy ended, the unit was sold after 2 or 3 months.

Analysis

The attention of the parties is drawn to the following particular statutory provisions:

ACT

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

REGULATION

Part 3 – Condition Inspections

Based on the documentary evidence and testimony, the various aspects of the respective applications and my related findings are set out below.

LANDLORD

\$185.66: replacement cost of 4 broken light fixtures

\$1,627.36: upgrade replacement cost of broken glass cook top replaced by tenant

\$159.04: replacement cost of mirror closet door

\$730.24: cleaning of blinds

\$24.00: replacement cost of dryer vent

Again, I note that neither a move-in nor a move-out condition inspection report was completed with respect to the first of what were 2 terms of tenancy. As to the second term of tenancy, the tenant claimed that the landlord did not either propose or undertake to negotiate a time for completing a move-in or move-out condition inspection report together. Further, there is no evidence that the landlord issued a notice of final opportunity to schedule a condition inspection at either the beginning or end of the second term of tenancy. Additionally, there is no evidence to suggest that the tenant abandoned the unit.

In the absence of the comparative results of move-in and move-out condition inspection reports which were completed with the participation of both parties, I find that the landlord has failed to meet the burden of proving entitlement to this aspect of his claim. Accordingly, this aspect of the claim is hereby dismissed.

While the landlord has not specifically applied to retain the security deposit, for information, the attention of the parties is drawn to the statutory provisions below.

Section 24 of the Act provides in part:

24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, is extinguished if the landlord

(a) does not comply with section 23(3) *[2 opportunities for inspection]*,

Section 36 of the Act provides in part:

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35(2) *[2 opportunities for inspection]*,

\$50.00: *filing fee*

As the landlord has not succeeded with the principal aspect(s) of his application, the application to recover the filing fee must also be dismissed.

TENANTS

\$1,980.00: *(2 x \$990.00) the double return of the security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives that tenant's forwarding address in writing, the landlord must either

repay the security / pet damage deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security / pet damage deposit.

I am unable to determine how and when the tenant initially provided her forwarding address to the landlord for the purposes of repayment of her security deposit. Following from this, I am unable to make a finding around whether the landlord undertook to repay the security deposit within the applicable 15 day period by way of the aforementioned problematic cheques.

Despite the above, I am satisfied that the landlord is now aware of tenant “MVJ’s” forwarding address. I find that the landlord will be deemed to have received this decision on June 29, 2015, or 5 days after it is dated. I find that the landlord will have 15 days from June 29, 2015 to deal with the security deposit pursuant to section 38 of the Act. In the event that the landlord fails to do so, the tenant has the option to reapply for the double return of her security deposit. In the meantime, this aspect of the tenant’s application is dismissed with leave to reapply.

\$50.00: *filing fee*

As the main aspect of the tenant’s application is dismissed with leave to reapply, the application for recovery of the filing fee paid for this particular application is dismissed.

Conclusion

The landlord’s application is hereby dismissed in its entirety.

The tenants’ application for a monetary order as compensation reflecting the double return of the security deposit is hereby dismissed with leave to reapply.

The tenants’ application to recover the filing fee is hereby dismissed.

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: June 24, 2015

Residential Tenancy Branch

