Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenants for the return of their security and pet damage deposits, and to recover the filing fee from the Landlord.

The Tenants appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. The Landlord also provided documentary evidence prior to the hearing which the Tenants confirmed receipt of. However, there was no appearance by the Landlord during the 13 minute duration of the hearing. Therefore, I turned my mind to the service of documents by the Tenants.

The male Tenant testified he personally served the Landlord with the Application on April 15, 2015. As the Landlord provided documentary evidence prior to this hearing, I find that this is sufficient evidence for me to determine that the Landlord had been served notice of this hearing pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the "Act"). The hearing continued to hear the Tenants' undisputed evidence and I did consider the Landlord's documentary evidence which was disputed by the Tenants.

Issue(s) to be Decided

Are the Tenants entitled to the return of the remaining security and pet damage deposits which the Landlord currently holds?

Background and Evidence

The Tenants testified that this tenancy began on March 1, 2014 for a fixed term of 12 months after which it continued on a month to month basis. A written tenancy agreement was completed and rent was $750.00 payable on the first day of each month. The Tenants provided the Landlord with $375.00 as a security deposit on

February 15, 2015 and $200.00 as a pet damage deposit on February 12, 2015 (herein referred to as the “Deposits”).

The female Tenant testified that in February 2014 she gave written notice to the Landlord to end the tenancy. The parties then agreed to mutually end the tenancy on March 30, 2015 after the Tenants paid the Landlord rent for March 2015.

The male Tenant testified that at the end of the tenancy, the Landlord completed a move out Condition Inspection Report (the “CIR”) on March 29, 2015. This was provided into evidence by the parties. The female Tenant testified that the Landlord invited them to record their forwarding address on the CIR which they did. The female Tenant testified that during the inspection the Landlord pointed out some minor damage to the rental unit. In relation to this damage, the Tenants agreed that the Landlord could deduct $25.00 from their Deposits. The Landlord provided the Tenants a cheque for the remaining amount of $550.00.

However, when the Tenants cashed the cheque provided to them by the Landlord, the cheque had been cancelled. The male Tenant testified that he contacted the Landlord by phone and she informed him that after the move out CIR had been completed, the Landlord noticed several other damages for which she was going to make further deductions to their Deposits.

The female Tenant testified that they received a letter to their forwarding address from the Landlord with a new cheque in the amount of $283.80. In the letter dated April 1, 2015 provided by both parties, the Landlord writes that upon further inspection of the rental unit she discovered more damages for which she is charging the Tenants an additional amount of $266.20. This was on top of the $25.00 already approved by the Tenants.

The Tenants explained that they have now chased the cheque the Landlord provided to them in the amount of $283.80. However, they dispute the damages detailed by the Landlord in her April 1, 2015 letter and now seek to recover the remaining amount of $266.20 which the Landlord kept without their permission.

The Landlord writes in her documentary evidence that her evidence is a cross Application. In the evidence the Landlord explains that she noticed several damages caused by the Tenants which were not picked up during the move out condition inspection of the rental unit. The Landlord provided photographic evidence and receipts with her documentary evidence. The Landlord concludes that the deductions she outlined in the amount of $266.20 are more than fair and reasonable.

Analysis

Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the Deposits or make an Application to claim against them. Section 38(4) (a) of the Act provides that a landlord may make a deduction from the Deposits if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on March 30, 2015. I also accept the Tenants' evidence that the Landlord was provided with a forwarding address on the CIR on March 29, 2015. While I am satisfied by the Tenants' oral testimony that the Tenants consented to the Landlord deducting $25.00 from their Deposits, there is no evidence before me that the Landlord obtained the Tenants' consent to make the additional deduction of $266.20. Neither is there any evidence before me that the Landlord made an Application within the 15 day time period to obtain an Arbitrator's order to allow this deduction to me made.

Submitting evidence in response to a Tenants' Application is not a cross Application. The Landlord was required to file a Landlord's Application to make a claim against the Tenants' security deposit within the time limits imposed by Section 38(1) of the Act. A landlord cannot unilaterally make deductions to a tenant's Deposits contrary to the Act, however fair or reasonable that deduction may be. A landlord must deal properly with a tenant's Deposits. Therefore, I find that when the Landlord made the $226.20 deduction from the Tenants' Deposits, the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the Deposits. Policy Guideline 17 to the Act provides guidance on how security deposits are to be offset. Under point 4 in the section titled "Return or Retention of Security Deposit through Arbitration", the amount to be doubled does not include an amount a tenant consents to.

Therefore, I find that as the Tenants consented to a deduction of $25.00, the amount to be doubled is the remaining amount of $550.00. Therefore, the Landlord owes the Tenants **$1,100.00** ($550.00 x 2). As the Landlord has already returned $283.80, the Landlord is liable for the remaining balance of **$816.20** ($1,100.00 - $283.80).

As the Tenants have been successful in this matter, I also award the Tenants their filing fee of **$50.00** pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenants is **$866.20** ($816.20 + $50.00).

The Tenants are issued with a Monetary Order which must be served on the Landlord. The Tenants may then file and enforce this order in the Provincial Court (Small Claims) as an order of that court if the Landlord fails to make payment in accordance with the Tenants' written instructions. Copies of this order are attached to the Tenants' copy of this decision.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenants' security deposit. Therefore, the Tenants are awarded double the amount back minus the amount already returned by the Landlord. Therefore, the Landlord owes the Tenant the balance of $866.20.

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: September 17, 2015

Residential Tenancy Branch