



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTWOOD RIDGE DEVELOPMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD FF

Introduction

Both parties were present at the hearing and the landlord confirmed they had been served the Application for Dispute Resolution by registered mail. This is an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double a portion of the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

Issue(s) to be Decided:

Have the tenants proved on the balance of probabilities that they are entitled to the return of double a portion of s the security deposit according to section 38 of the Act?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. It is undisputed that the tenants paid a security deposit of \$475 in 2012 and a pet damage deposit of \$475 and agreed to rent the unit for \$975 a month. The tenants vacated the unit at the end of March 2015 and provided their forwarding address in February 2015. The landlord agreed these facts were correct. Both parties agreed that the landlord had refunded \$567.50 of the deposits on April 10, 2015. The male tenant said they had only agreed to pay \$90 to clean the range hood.

A one page condition inspection report is in evidence. The tenants agreed they had damaged the carpet by putting 3 small bleach spots on it when they were mopping a floor. However, they said the landlord's charges are excessive. On the condition inspection report, \$157.50 was charged for carpet cleaning, \$150 for the damage to the carpet which is unrepairable so has lost value for other renter's and \$75 for cleaning the stove hood. The one page report shows no problems at move-in but problems with the carpet and cleaning of the range at move-out. The report is clearly signed by the landlord and the female tenant on March 30, 2015. The female tenant said she was

coerced into signing it for she thought she had no other choice. She thought if she did not sign, the landlord might withhold more of the deposit. She said it was a one way discussion where the landlord showed her the costs and told her to sign. She did not realize she could write a disagreement as this is her first tenancy.

The landlord said they never heard any complaint for three months after the balance of the deposit was returned and their contact number was on the letter with the return of the deposit. Usually if a tenant feels under duress or objects, they hear about it right away. He said if the tenant objects, they can always note their objection somewhere on the report. It does not seem fair that they can come back later and say they disagree after signing agreement with the costs.

The male tenant said he had a medical problem for a few months but was advised by the Residential Tenancy Branch he could file an Application up to one year after the tenancy so he filed this when he was able. He does not see how the landlord justifies the cost of \$150 for a couple of bleach marks.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

The *Residential Tenancy Act* provides [emphasis mine]:

Return of security deposit and pet damage deposit

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
*(a) at the end of a tenancy, **the tenant agrees in writing** the landlord may retain the amount to pay a liability or obligation of the tenant, or*

I find the preponderance of the evidence is that the female tenant agreed in writing that the landlord could retain \$382.50 of their deposits of \$950. Although she said she was coerced or under duress when she signed the move-out report, I find insufficient evidence to support her allegation. Although she said she did not know she could

object by noting this on the report as this is her first tenancy, I find it unlikely that if she had strong objection or felt coerced, she did not advise the landlord by letter or email after the fact. While the male tenant may have had medical issues, I find insufficient evidence why the female tenant did not lodge an objection with the landlord who is a large company. I find the landlord legally deducted \$382.50 from the deposits pursuant to section 38(4) (a) and returned the balance of \$567.50 within the 15 days allowed under section 38 of the Act. I dismiss the application of the tenants.

Conclusion:

I dismiss the application of the tenant and find them not entitled to recover their filing fee due to their lack of success.

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: December 02, 2015

Residential Tenancy Branch

