Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kaza West Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and an agent for the landlord.

During the hearing the landlord's agent clarified that the originally named respondent was the property management company formerly responsible for the residential property. However, that company no longer represents the owner of the property. With permission of the tenant I have amended the named respondent to reflect the name of the owner of the property as provided by the landlord's agent during the hearing.

I have advised the tenant that should she have any difficulty enforcing this decision or order based on the name of the respondent that she should submit a Request for Correction and that it be specifically brought to my attention for any required corrections.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The parties agreed the tenancy began on April 1, 2014 as a 1 year fixed term tenancy that converted to a month to month tenancy on April 1, 2015 for a monthly rent of

$1,300.00 due on the 1st of each month with a security deposit of $650.00 and a pet damage deposit of $650.00 paid. The parties agreed the tenancy ended on June 30, 2015.

The tenant submitted that she provided the landlord with her forwarding address by email before the end of May 2015 and again in July 2015. She also stated she provided her forwarding address during the move out inspection. The landlord agrees the tenant had provided her forwarding address at the move out inspection on July 2, 2015.

The tenant submitted into evidence a copy of the Condition Inspection Report dated July 2, 2015 with the tenant's address. I also note the tenant also signed a section of the Report agreeing to allow the landlord to deduct from her security deposit an amount "TBD" but nothing from the pet damage deposit.

The landlord's agent testified that a cheque in the amount of $650.00 was mailed to the tenant on July 10, 2015 for return of the pet damage deposit in full but that to the date of this hearing the cheque had not been cashed.

The tenant stated that she had received a phone call sometime after July 24, 2015, the day she had filed her Application for Dispute Resolution and served the landlord with notice of this hearing, stating that the landlord had a cheque in the amount of $650.00 for her. She states that because she had submitted her Application already she was not sure what she was supposed to do. She states she never did receive or pick up the cheque.

The tenant submitted into evidence copies of several emails including one dated July 23, 2015 from an agent of the landlord providing a detailed calculation of items the landlord intended to claim against the tenant for in regard to the condition of the rental unit.

The calculations included stove top replacement; painting of the rental unit; and cleaning of the rental unit for a total claim of $1,327.16. The email also states that some of these charges are related to "scratches of baseboards by the dog and cleaning must be done as well inside the fridge, laundry room not vacuumed, all through hair dog." [reproduced as written].

Analysis

Section 38(4)(a) of the *Act* states a landlord may retain an amount from a security deposit or a pet damage deposit if the tenant, at the end of the tenancy, agrees in writing the landlord may retain that amount to pay a liability or obligation of the tenant. I find that this allowance includes a requirement on the part of both parties to agree to a specific amount.

In the case before me I acknowledge the tenant agreed the landlord could retain an amount "TBD" from her security deposit. However, based on the tenant's evidence and testimony I find the tenant's intention was related to the landlord's sole issue of a stove top repairs/replacement.

As the landlord has included in their calculations a stove replacement; labour; painting; and cleaning totaling $1,327.16, an amount greater than the total deposit held and the tenant only indent to allow for the stove top, I find the parties did not come to an agreement, in writing, as to an amount the landlord could retain. As such, I find the landlord was not allowed to retain any amount of either deposit at all.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on my finding above that the landlord did not have the tenant's agreement in writing to withhold any amount from the deposits I find the landlord was required to either return both deposits or file an Application for Dispute Resolution claiming against the deposits within 15 days of receipt of the tenant's forwarding address on July 2, 2015.

As the landlord had not, by the date of this hearing, filed an Application for Dispute Resolution to claim against either deposit, I find the landlord is required to have returned both deposits by July 17, 2015.

From the testimony of both parties I accept the landlord has not returned the security deposit of $650.00 and as such, I find the landlord has failed to comply with the requirements of Section 38(1). Therefore, I find the tenant is entitled to double the amount of the security deposit, pursuant to Section 38(6).

In regard to the pet damage deposit, based on the email correspondence of July 23, 2015 from the landlord's agent and the failure of the landlord to provide any

corroborating evidence that they had issued and provided a cheque to the tenant for the pet damage deposit, I find the landlord also failed to return the pet damage deposit to the tenant as per their obligations under Section 38(1). As a result, I find the tenant is also entitled to double the amount of the pet damage deposit, pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of $2,650.00 comprised of $2,600.00 double the amount of her security and pet damage deposits and the $50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: January 08, 2016

Residential Tenancy Branch