



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy commenced April 1, 2011 on a month to month basis. The tenant paid a security deposit of \$525.00. A move-in inspection report was prepared and given to the tenant. The tenancy was set to end August 31, 2014; however, with the landlord's consent, the tenant did not vacate and return possession of the unit until September 1, 2014. The tenant did not authorize the landlord to make any deductions from the security deposit in writing. The tenant provided his forwarding address to the landlord in writing by way of a registered letter sent March 24, 2015 which the landlord acknowledged receiving. The landlord did not refund any part of the tenant's security deposit and did not file an Application for Dispute Resolution to file a claim against the deposit.

The landlord claims to have obtained the tenant's verbal authorization to retain the security deposit but the tenant denied this. I did not explore the landlord's position further as the Act requires a landlord to obtain a tenant's written consent to make deductions from a security deposit.

It was undisputed that the landlord and tenant did not participate in a move-out inspection together. I explored this point further with a view to determining whether one of the parties extinguished their right to the security deposit.

The parties were in dispute as to whether a move-out inspection was scheduled. It was undisputed that the tenant received a move-out checklist from the landlord but the tenant was of the position the landlord did not propose a specific date and time for the move-out inspection. The landlord was of the position that it was contained in the move-out checklist. The move-out checklist includes the following statement: "You are expected to have the rented dwelling ready for inspection by the Property Manager by 12:00 p.m. on the last day of your tenancy."

It was undisputed that the tenant requested an extra day to move-out and the landlord was agreeable to accommodating the tenant's request. However, with the move-out day extended the communication regarding the move-out inspection was not revisited. The landlord stated that she expected the tenant to contact her when he was finished moving out but he did not.

The tenant stated that he was not surprised that a move-out inspection was not scheduled since there was no damage to the property and the landlord had communicated to him that she was going to commence renovations on the property after his tenancy ended and that he expected her to contact him when those were complete so that he could arrange for carpet cleaners to come in.

The landlord stated that she inspected the property with the tenant a few days before he moved out. She noted that it was not sufficiently clean and she advised the tenant to clean further. The landlord acknowledged that she planned to renovate and that the carpets would be cleaned after the renovation.

In early September 2014 the landlord saw the tenant removing belongings from the garage and this was not an issue for her; however, a move-out inspection was not suggested at that time. The tenant responded by stating that had the landlord requested a move-out inspection when she saw him clearing out the garage he would have done so. The landlord claims to have tried to reach the tenant by telephone in early September 2014 and was unsuccessful. I note, however, that in the landlord's written submission she describes her attempts to contact the tenant by telephone "to get his things" that were left at the property and she does not indicate the purpose of her telephone call was to schedule a move-out inspection. In any event, the landlord did not prepare a move-out inspection report.

The landlord sought to introduce evidence with respect to the condition of the property at the end of the tenancy and expenses incurred by her; however, the landlord had not filed an Application for Dispute Resolution to seek damages and loss from the tenant and her expenses were not relevant to the tenant's application. The tenant also indicated he was not prepared to deal with any such claims by the landlord at this time. As such, I did not allow further submissions and informed the parties that the landlord retains the right to file her own Application against the tenant.

Analysis

A security deposit is an amount paid by a tenant to be held in trust for the tenant by the landlord. Accordingly, the money belongs to the tenant and the landlord must not keep the security deposit unless the landlord has the legal right to do so under the Act.

The purpose of this proceeding is to determine whether the landlord administered the security deposit in accordance with the Act. The landlord's allegations that she incurred expenses to clean and repair the property and haul away garbage were not issues to determine since the landlord had not filed an Application for Dispute Resolution to seek compensation from the tenant for such things. As the parties were informed during the hearing, the landlord retains the right to file an Application within the statutory time limit for doing so if she so chooses.

Unless a landlord has a legal right to retain the security deposit, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, it is undisputed that the tenant provided a forwarding address to the landlord by registered mail sent on March 24, 2015 meaning he met his obligation to provide a forwarding address to the landlord in writing within one year of the tenancy ending. It is also undeniable that the landlord had not refunded the security deposit to the tenant and did not file an Application for dispute Resolution to claim against it within 15 days of receiving the forwarding address. The Act does permit a landlord to make deductions from the security deposit if the tenant consents to the deduction(s) in writing but the landlord did not obtain any written consent for deductions. Therefore, the only basis the landlord may have for retaining the security deposit is if the tenant extinguished his right to its return.

The Act provides for extinguishment where a landlord or tenant if they fail to participate at the scheduled move-in or move-out inspection. The Act requires the landlord to schedule the inspection by giving the tenant two opportunities. The Regulations specify how the landlord is to give the tenant two opportunities. The Regulations also provide that the rental unit must be vacant when the condition inspection takes place.

The Regulations provide that the landlord is to make the first proposal to the tenant with a date and time for the inspection. This may be accomplished orally or in writing. I was not provided evidence to suggest the landlord orally proposed a specific date and time to the tenant for the move-out inspection. However I was provided a copy of the move-out checklist which may be viewed as the landlord's proposal for a date and time for the move-out inspection. I find the use of the word "expected" leaves it somewhat unclear as to whether the move-out inspection will take place at 12:00 noon on the last day of tenancy. Nevertheless, if the move-out checklist was accepted as the being landlord's proposal to the tenant for the move-out inspection, the tenant had requested and obtained the landlord consent to extend the date for moving out to September 1, 2014. I did not hear from the landlord that she went to the property at 12:00 on September 1, 2014 or a later time for purposes of doing the move-out inspection. Accordingly, I am unpersuaded that a move-out inspection was set for 12:00 noon on September 1, 2014 or another later time when the unit was vacant and that the landlord attended at that time for the purpose of performing the move-out inspection with the tenant and the tenant failed to appear. Therefore, I make no finding that the tenant extinguished his right to return of the security deposit.

In light of the above, I find the landlord failed to administer the security deposit in a manner that was required of her under section 38(1) of the Act and I find the landlord is now obligated to pay the tenant double the security deposit under section 38(6) of the Act.

The tenant is awarded double the security deposit, or \$1,050.00, plus recovery of the \$50.00 filing fee and is provided a Monetary Order in the sum of \$1,100.00 to serve and enforce upon the landlord.

Conclusion

The tenant is provided a Monetary Order in the sum of \$1,100.00 for return of double the security deposit and recovery of the filing fee.

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 13, 2016

Residential Tenancy Branch