



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords for the cost of the application.

The tenant and one of the named landlords attended the hearing and the landlord represented the other named landlord and the landlord company. The parties each gave affirmed testimony, provided evidentiary material to the Residential Tenancy Branch and to each other, and were given the opportunity to question each other. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on August 1, 2015 and was to expire on July 31, 2016, thereafter reverting to a month-to-month tenancy or another fixed length of time. A copy of the tenancy agreement has been provided. The tenant moved out of the rental unit on February 29, 2016, having given written notice to the landlords, a copy of which has also been provided. Rent in the amount of \$1,250.00 per month was payable on the 1st day of each month and there are no rental arrears. On July 23, 2015 the landlords collected a security deposit from the tenant in the amount of \$625.00 as well as a parking remote control deposit of \$75.00.

The tenant's written notice to vacate the rental unit is on a form entitled: Resident Notice to Vacate. It is dated February 1, 2016 and provides in handwriting a forwarding address of the tenant. The tenant testified that the form was completed and signed in the office of the landlords' caretaker or manager on February 1, 2016; the tenant received a copy and left the

original with the caretaker or manager. The landlords have not returned any portion of the security deposit or remote control deposit.

The tenant further testified that the move-out condition inspection report, a copy of which has been provided, shows a Security Deposit Statement, which the landlords' agent at the time told the tenant she had to sign or the tenant would not be permitted to leave the building. It shows the amount of the security deposit is \$625.00; garage remote deposit is \$75.00; for a total of \$700.00. It also shows liquidated damages of \$805.33 and a balance due to the landlords of \$105.33. The statement portion signed by the tenant states: "I agree with the amounts noted above and authorize deduction of the Balance Due Landlord from my Security Deposit and/or Pet Damage Deposits. If the total owing to the Landlord exceeds my deposit(s), I agree to pay the Landlord the excess amount." It is signed by the tenant and dated February 29, 2016, and again shows the forwarding address of the tenant in writing. The tenant testified that she didn't want to sign it but was by herself and didn't realize she needed a lawyer. The tenant did not understand why it was such a problem when the rental unit was re-rented immediately and there was no loss to the landlords.

The tenant contacted the Residential Tenancy Branch for advice and was told that legally a landlord must return the full deposits before requesting liquidated damages and cannot keep a deposit in lieu of money the tenant may owe the landlord. The tenant was also advised that a landlord does not have to collect liquidated damages even if it's contained in the tenancy agreement. The tenant called the landlord for negotiation and he disagreed.

The tenant claims double the amount of the security deposit, or \$1,250.00, return of the remote control deposit of \$75.00 and recovery of the \$100.00 filing fee for the cost of this application, for a total of \$1,425.00.

The landlord testified that the tenant initialed Clause 5 on the tenancy agreement which speaks specifically to liquidated damages and specifies an amount of \$805.00 if the tenancy ends earlier than the fixed term. It also states that it is not a penalty. The landlord has provided evidence setting out how liquidated damages are calculated. Once a tenant gives notice to end a tenancy the marketing team and resident manager advertise and show the rental unit. Although the rental unit was re-rented right away, it still took work to get it re-rented. It was advertised, but the landlord is not certain how many people may have looked at it.

The tenant agreed to the landlord retaining the deposits on the move-out condition inspection report, and the landlords are prepared to waive the balance owed by the tenant of \$105.33 as stated on the Security Deposit Statement. The tenant has signed it agreeing to the condition of the rental unit and to the landlords retaining the deposits. If the tenant had signed as disagreeing, the landlords would have filed for arbitration for liquidated damages.

Analysis

The tenant is correct that a landlord may not cause a tenant to pay liquidated damages out of a security deposit, and a landlord is not obligated to collect liquidated damages even if it's contained in a tenancy agreement. The tenant is also correct that a landlord must return a security deposit or pet damage deposit in full to a tenant or make an application for dispute resolution claiming against the deposit(s) within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must repay the tenant double. However, the *Residential Tenancy Act* also provides that a tenant may agree in writing to the landlord retaining the deposits.

38 (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

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Where a party makes a monetary claim against another party, the onus is on the claiming party to establish the claim. In this case, the only effective argument by the tenant would be that the tenant signed the consent to the landlord keeping the deposit(s) under duress. The tenant testified that she was told she had to sign it or she wouldn't be permitted to leave the building. The tenant read the statement and felt she was mis-lead after speaking to someone at the Residential Tenancy Branch, but I am not satisfied that the tenant signed it under duress. I find that the tenant agreed in writing that the landlord could keep the security deposit and remote control deposit, and the tenant has not established the claim.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

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: July 21, 2016

Residential Tenancy Branch