



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNSD, FF

Introduction

The tenants apply to recover a \$750.00 security deposit. The landlord claims to have the tenants' written authorization to keep it.

At the start of the hearing it was disclosed that the landlord is an employee of the Residential Tenancy Branch. That fact raises a concern that an arbitrator also employed by the Branch would have a bias. The parties were informed that this arbitrator is a "contract" arbitrator and not an employee of the Branch. Both sides accepted this arbitrator and agreed to proceed with the hearing of the dispute.

The landlord and the tenant Ms. C. attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other.

The tenants had provided the landlord with evidentiary materials only the day before this hearing. The attending tenant identified the materials. In the result, none of that evidence was shown to be relevant and so a determination about whether to accept it or not was not necessary.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord had the lawful right to retain the deposit money?

Background and Evidence

The rental unit is the three bedroom upper portion of a duplex.

The tenancy started in September 2014 for a one year fixed term. The monthly rent was \$1500.00. The tenants gave the landlord a \$750.00 security deposit.

In the early part of 2015 the tenants were able to find a house to purchase. Their possession date for their new home was July 1, 2015.

They gave the landlord notice that they would be ending their tenancy at the end of June 2015, two months before the end of the fixed term.

On June 29, 2015 the landlord and the tenant Mr. K. conducted a move out inspection together and a condition inspection report in the standard form was prepared.

At that time the landlord stated that she could claim July rent because the tenants were ending the tenancy before the end of the fixed term. She proposed that she would accept the \$750.00 deposit money pursuant to a clause in the tenancy agreement addendum whereunder she could request liquidated damages for half a month's rent if the tenants broke the tenancy agreement.

Mr. K. went away and consulted with Ms. C. privately by telephone, returned to the landlord and agreed. He signed the report authorizing the landlord to keep the deposit money.

The parties wished to give evidence about the state of the premises at the end of the tenancy but that evidence is not relevant to the issue.

The tenant Ms. C. says that Mr. K. was pressed into signing off the deposit by the landlord's threat of claiming the July rent.

She thinks the landlord re-rented the premises in July.

The landlord says she was able to re-rent the premises in August.

She says she explained the liquidated damages clause in the tenancy agreement to Mr. K. at the move out inspection.

Analysis

Under s. 38 of the *Residential Tenancy Act* (the "RTA") a landlord is entitled to retain any part of a security deposit that the tenant agrees in writing the landlord may retain to pay a liability or obligation of the tenant. There is a special box in the standard form move out inspection report intended to record just such an agreement.

The purpose of a move out inspection and the requirement of a report are to foster agreement and limit the likelihood of a dispute later. Combined with s. 38 of the *RTA*, it also spurs the return of a tenant's deposit money.

The statements in a move out report are not conclusive. However, what the report shows to have been the agreement made between the parties bears great weight.

In this case I find that the tenants have not shown that they were compelled or forced to sign off on the deposit money. The landlord presented them with a claim she was entitled to make; the tenants were unilaterally ending a fixed term tenancy early and were liable for further rent or loss of rental income resulting from that early termination. The tenants had an opportunity to consider the landlord's proposal and consult with each other.

They are bound by that decision.

I find that the landlord had the tenants' written authorization to retain all of the \$750.00 security deposit. The tenants' claim for its return must fail.

Conclusion

The tenants' application is dismissed.

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 07, 2016

Residential Tenancy Branch