



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD FF MNDC

Introduction

Both parties attended the hearing and the tenant provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and by email with his forwarding address. The landlord provided evidence they had served their Application for Dispute Resolution by registered mail. I find the Applications were served pursuant to section 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

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

The landlord applies to recover the cost of \$120 to clean the unit.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act?

Has the landlord proved on the balance of probabilities that they are entitled to compensation for cleaning the unit?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. Both parties agreed the tenant paid a security deposit of \$700 in February 2015 and agreed to rent the unit for \$1400 a month. The tenant vacated the unit on March 31, 2016 but did not respond to email requests of the landlord to do a move out condition inspection report. He said the landlord did not serve him with the proper form for the request and in any case, the landlord did not do a formal move in condition inspection report. They just made some notes on paper when he moved in and he never saw a report. The landlord said they called him many times to do the inspection but he refused to cooperate. She pointed out that the tenant's offer to compromise on cleaning costs prior to the hearing is proof that cleaning was

required. The tenant said they cleaned to the standard that the unit was in when they moved in.

The tenant said he supplied his forwarding address in writing by email on April 5, 2016. The landlord agreed but said his email was not service of his forwarding address in writing according to section 88 of the Act. She said they offered to give it to him in person, after deducting \$120 for cleaning but he refused. The tenant's deposit has never been returned and he gave no permission to retain any of it.

The landlord filed their Application on May 2, 2016. In evidence are the Applications, emails and the tenancy agreement.

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

.

Analysis:

In respect to the security deposit, the Act provides:

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...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find the evidence of the tenant credible that he paid \$700 security deposit. However, I find he did not serve the landlord with his forwarding address as required by section 88 of the Act. I find section 88 does not provide that email service is legal service of a forwarding address. As the landlord pointed out, the tenant is asserting his right to have the request to do a move out inspection report served formally so he should be prepared to comply with the Act also with service of his forwarding address. I find his application for double his security deposit is premature and give him leave to reapply

after he has served the landlord legally with his forwarding address for the return of his deposit.

In respect to his failure to attend a move-out inspection, I find Residential Policy Guideline 17 states:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if: the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity)

1. *The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if⁹:*
 - *the landlord does not offer the tenant at least two opportunities for inspection as required¹⁰ (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
 - ☐ *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*
2. *In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.*
9. *A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:...*
 - ☐ *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
 - ☐ *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
 - ☐ *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

I find the weight of the evidence is that the landlord did not comply with the Act by supplying the tenant with a move in condition inspection report and by not using the formal Notice of Final Opportunity, therefore the right of the tenant to the deposit is not extinguished pursuant to section 36 of the Act. As the landlord's breach occurred first, I

find the landlord's right to claim against the deposit is extinguished and it remains in trust.

However, I find the landlord retains the right to claim damages against the tenant and they have claimed \$120 for cleaning. I find section 37(2) of the Act obligates a tenant to leave the rental unit reasonably clean. This section does not have exceptions so I find the tenant was obligated to clean the unit, whether or not it was the best standard of cleanliness when they moved in. I find the weight of the evidence is that the oven, microwave and drawers were not cleaned and there were spots on the carpet and walls. The photographs and invoice support the credibility of the landlord's testimony. I find the landlord entitled to \$120 for the cleaning fee as invoiced. This will be offset against the security deposit in trust for the tenant which must be dealt with in accordance with section 38 of the Act as soon as the tenant legally serves his forwarding address in writing to the landlord.

Conclusion:

I find the landlord entitled to \$120 for cleaning and to recover the filing fee (\$100) for this application. I authorize the landlord to deduct the \$220 from the tenant's security deposit which leaves a balance of \$480 in trust for the tenant which must be refunded after he complies with section 88 and serves his forwarding address in writing.

I dismiss the Application of the tenant as it is premature. I give him leave to reapply after he has served his forwarding address in writing to the landlord in compliance with section 88 of the Act. I find him not entitled to recover filing fees due to his 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: August 24, 2016

Residential Tenancy Branch

