



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnsd

Introduction

The tenants apply for the return of the tenant's security deposit, doubled.

Both parties were represented at the hearing. The first named applicant in the tenants' application is the tenant's lawyer, but was never actually a tenant, and as agreed at the hearing, his name is removed from the style of cause. The female tenant attended and gave testimony.

The landlord named in the tenants' application did not attend the hearing, but her daughter, who is a co-owner attended, along with her spouse and an agent..

Issue(s) to be Decided

Are the tenants entitled to the return of the security deposit, doubled?

Background and Evidence

A large volume of material was exchanged, particularly by the landlord prior to the hearing, much of which was not relevant to the specific claim of the tenants. Based upon the relevant written evidence and the testimony heard, the relevant facts are as follows:

This tenancy began February 1, 2014 and ended on April 1, 2016. The tenants paid a security deposit of \$675.00 at the start of the tenancy, none of which has been returned. The female tenant testified that there was no condition inspection done at the start of the tenancy, and no condition inspection report prepared by the landlord at the start of the tenancy. The landlord's daughter testified that although she had never seen a report from a condition inspection, her mother (the named landlord in the tenants' application) had told her that an inspection had been done, and a report prepared.

At the end of the tenancy, a condition inspection took place. The report of that inspection provides no detail as to the condition of various areas at either the start or end of the tenancy. The report does state: "All blinds in house will be prof. cleaned by landlord and tenant to cover cost from damage deposit. Plus Hydro, Gas (Utilities owed for March)". The tenant's and landlord's initials appear below this entry. The report also states: "I, [Tenant] agree to the following deductions from my security and/or pet damage deposit: Blind Cleaning Service". The female tenant has signed this statement. The report includes the tenants' forwarding address.

The landlord paid the sum of \$273.00 for blind cleaning on or about April 9, 2016. The landlord paid the outstanding utilities at about the end of April. The tenants' portion of this obligation was \$89.18 for Hydro, and \$51.61 for Gas. The total paid by the landlord following the tenancy for blind cleaning and utilities therefore, is \$413.79. No formal application for this sum has been filed by the landlord, to date.

Analysis

I prefer the tenant's testimony over that of the landlord, as to whether a condition inspection occurred at the start of the tenancy, and as to any report of that inspection. I find it telling that no inspection report from the start of the tenancy was tendered into evidence by the landlord. I note that no firsthand testimony was provided by the landlord about any such inspection, or report. The testimony I heard from the landlord's daughter was of a hearsay nature, rather than testimony given by a person who actually participated in any inspection. Even if some form of condition inspection did occur, I find on a balance of probabilities that no report of any such inspection from the start of the tenancy was prepared, or was ever provided to the tenants.

The contention of the tenants is that the landlord's right to retain any of the security deposit was extinguished, as a result of failing to conduct a condition inspection and/or prepare a report of same at the start of the tenancy. The tenants therefore request that they recover their entire deposit, doubled. The tenants, in effect, rely upon section 24(2) of the Residential Tenancy Act which provides that the right of a landlord to claim against a security deposit for damage to residential property is extinguished if an inspection involving the landlord and tenant does not occur at the start of the tenancy, or if an inspection report is not completed or a copy of the report is not given to the tenant.

The landlords in turn rely upon section 38(4) of the Residential Tenancy Act which provides that a landlord may retain an amount from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. The contention of the landlords is that as a result of the agreement reflected on the move out inspection report, the issue of extinguishment is no longer relevant, as it relates only to claims as against damage, whereas the Residential Tenancy Act specifically permits the parties to make an agreement regarding the disposition of the deposit.

The tenant replies that the agreement was made under duress, given the stressful and angry mood at the time it was entered into.

Policy Guideline 17 assists in the resolution of this dispute. The guideline states in Section C(3) that an arbitrator will order the return of double the deposit in a case where the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act. I consider this aspect of the Guideline to properly reflect the wording and intent of the Residential Tenancy Act. In my view, the extinguishment of the landlord's right to retain the deposit (for damage) arose

immediately upon the landlord's failure to provide a Condition Inspection Report, and having been extinguished could not be later resurrected by way of agreement at the end of the tenancy. The landlords' claim for compensation for the cost of blind cleaning is clearly related to the issue of damage to the blinds. This aspect of the landlord's argument fails – the purported agreement to deduct the future cost of blind cleaning from the deposit was never a valid agreement, because the landlords had no right to enter an agreement about the deposit once the landlords' right to that retain that deposit was extinguished. This is not to say that the landlords do not have a claim to recover for damage to the premises, only that they were prohibited from making a claim for such damage as against the deposit. The landlords remain at liberty to make such a claim within the limitation period of the Residential Tenancy Act.

The tenants acknowledge having failed to pay utilities of hydro and gas, and remain liable for same to the landlords. However, the alleged agreement on the move-out inspection report is not enforceable an agreement permitting a deduction for the obligation towards utilities as against the security deposit, as it does not permit the landlord to retain any specific sum for such indebtedness. Section 38(4) specifically uses the words "an amount" may be retained by the landlord from the deposit if the tenant agrees. In this case no "amount" was ever agreed upon.

The Act clearly intends that once a tenancy ends and a forwarding address provided, there is a 15 day window for the landlord to either return the deposit, or file a claim for the deposit. The landlord did neither. The Act certainly does not contemplate the enforcement of an ambiguous or indefinite agreement over the deposit that offers no date by when the sum must be determined, and applies to some future and unknown sum. To be enforceable, any agreement for a deduction for monies owed for utilities by a tenant must specify the exact amount owed and agreed to, on the condition inspection report. Again, the landlords remain at liberty to file a claim in the future as against the tenants, should the tenants fail to pay their indebtedness related to utilities.

Under section 38(1) of the Residential Tenancy Act, a landlord has an obligation to either file a claim to retain the tenant's deposit, or to return a tenant's security deposit, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, whichever is later. As noted above, the landlord has filed no claim as against the tenant. The 15 day period ended April 16, 2016, but the deposit was never returned. As explained above, the landlord's right to retain any of the deposit for cost of blind damage was extinguished, and no enforceable agreement was made as to any other amount certain that could be retained. Given these factors, and in the absence of an application for a monetary sum as against the tenants filed in this process by the landlords, I have no authority to award these monetary claims of the landlord in the context of this hearing.

Based upon the above, the landlords are found to have failed to comply with section 38(1), and as required by section 38(6) must pay the tenants double the amount of the security deposit. I find the tenants entitled to double the deposit, which is \$1,350.00. A monetary order for this sum is granted to the tenants.

Conclusion

The tenants are entitled to double the deposit. The landlord must pay to the tenants the sum of \$1,350.00.

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 16, 2016

Residential Tenancy Branch