



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for Monetary Order to recover double the security deposit; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, Regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order to recover double the security deposit?
- Is the tenant entitled to an Order for the landlords to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

The parties agreed that this tenancy started on June 28, 2015 for a fixed term tenancy that must end on May 27, 2016. The tenancy ended on that date. Rent for this unit was \$950.00.00 per month due on the first day of each month in advance. The tenant paid a security deposit of \$475.00 on June 12, 2015.

The tenant testified that the landlords failed to return the security deposit within 15 days of receiving the tenant's forwarding address by text message. The tenant testified that the landlords did received her forwarding address as they did return the amount of \$271.55 by cheque which was received on July 11, 2016. The landlords retained the balance of \$203.44. This amount was retained for a repair to the dryer. The tenant testified she is not responsible for this repair as it was a fault with the dryer which had been previously repaired when the tenant took possession of the rental unit and therefore was a pre-existing issue and not an issue caused through the tenant's actions or neglect. \$25.00 the money withheld was to remove some garbage. The tenant testified that the landlord was not given written permission to keep all or part of the security deposit but the tenant did agree by text message later and at the hearing that the landlords could keep \$25.00 towards the garbage removal from the security deposit.

The tenant testified that the landlords failed to complete a move in condition inspection report at the start of the tenancy. Therefore, the landlords have extinguished their right to keep any of the security deposit for damages to the dryer.

The landlords agreed that they did receive the tenant's forwarding address by text message on June 24, 2016 and that they did return part of the security deposit to the tenant at that address. The landlords agreed the tenant has not provided written permission for the landlords to keep all or part of the security deposit and testified that they retained the deposits for the damage to the dryer which was caused by the tenant

probably putting metal objects in the dryer which damaged the mother board. This repair cost \$178.00 and \$25.00 was deducted for the removal of garbage.

The landlords testified that they did not know they only had 15 days to return the security deposit and agreed they did not complete a move in or a move out condition inspection report at the start and end of the tenancy. The landlord asked me to take this damage to the dryer into consideration when I make my decision.

Analysis

After careful consideration of the testimony and documentary evidence before me I find as follows:

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against them by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the deposit to the tenant.

Therefore, based on the above and the evidence presented I find that the landlords did receive the tenant's forwarding address by text message. While this is generally not considered to be a method of providing a forwarding address in writing; as the landlords did respond to the tenant at this address and did send the tenant a partial amount of the security deposit I am satisfied for the purpose of the *Act* that the landlords were provided with a forwarding address in writing on June 24, 2016.

Section 23(4) of the *Act* require a landlord to complete a condition inspection report at the start of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to

complete the condition inspection when the tenant moved in, I find the landlords contravened s. 23(4) of the *Act*. Consequently, s. 24(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing whichever is the later date.

Therefore, based on the above and the evidence presented I find that the landlords did receive the tenant's forwarding address in writing on June 24, 2016. As a result, the landlords had until July 09, 2016 to return all of the tenant's security deposit. As the landlords failed to do so, the tenant has established a claim for the return of double the security deposit to an amount of **\$950.00**, pursuant to section 38(6)(b) of the *Act*. As the landlords have since returned the amount of \$271.55 and as the tenant agreed at the hearing that the landlords can keep \$25.00 for garbage removal I have deducted these amounts from the tenant's monetary award. There has been no accrued interest on the security deposit for the term of the tenancy.

The tenant is also entitled to recover the **\$100.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant as follows:

Double the security deposit	\$950.00
Less garbage removal	(-\$25.00)
Less amount returned	(-\$271.55)
Filing fee	\$100.00
Total amount due to the tenant	\$753.45

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$754.45**. The Order must be served on the Respondents. If the Respondents fail to comply with the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

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: January 11, 2017

Residential Tenancy Branch