



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing, I confirmed service of evidence. The landlord confirmed that he received the tenants' evidence and I accepted and considered the tenant's documentary evidence in making this decision. I noted that I was not in receipt of any documentary evidence from the landlord. The landlord confirmed that he did not submit any evidence. Accordingly, the landlord's submissions and evidence consisted of oral testimony only.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Background and Evidence

The following facts were not in dispute: The tenant prepared a written tenancy agreement for this tenancy but the landlord did not. The landlord did not prepare a move-in inspection report. The tenancy started July 1, 2013 and the tenant paid a security deposit of \$450.00 on June 12, 2013. The monthly rent was initially set at \$900.00 payable on the first day of every month. Starting August 1, 2015 the monthly rent was changed to \$1,150.00 and the tenants paid an additional \$125.00 toward the security deposit. The tenancy ended June 30, 2016. The landlord did not prepare a move-out inspection report.

I did not explore the legality of the change in rent or the increase in security deposit as the tenants did not raise this as an issue and I had heard that an additional bedroom was provided at the same time the rent changed to the higher amount. Since the return of the security deposit was the issue to resolve, I found it sufficient to confirm the total amount of the deposit being held by the landlord.

The parties provided conflicting evidence with respect to the term of the tenancy. The tenants submitted that the tenancy was on a month to month basis, as seen in the written tenancy agreement prepared by the tenant. The landlord testified that the tenancy was for a two year fixed term. I asked the landlord to describe the document that provides for a two year fixed term tenancy. The landlord responded by stating that it is in the tenancy agreement. I pointed out that the tenancy agreement provided as evidence says that it was a month to month tenancy. The landlord implied that there may be another tenancy agreement although he did not have a copy of it in front of him.

The parties provided conflicting evidence as to how the tenancy came to an end. The tenants submitted that they gave a written notice to end tenancy to the landlord on May 11, 2016 to end the tenancy effective June 30, 2016. The tenants provided a copy of the May 11, 2016 notice to end tenancy. The landlord testified that the parties orally agreed to end the tenancy effective June 30, 2016.

The parties provided conflicting evidence as to whether the tenants provided a forwarding address to the landlord in writing. The tenants submitted that they gave their forwarding address to the landlord in writing by way of a letter handed to him in person at the residential property on June 27, 2016. The tenants provided a copy of the June 27, 2016 letter and it includes their forwarding address. Initially, the landlord testified that he received the June 27, 2016 letter where the tenants informed him they were moving out. Then the landlord changed his testimony to say he did not receive such a letter or any letter; and, that all communication was done orally or via email. I noted that the tenants had included some emails in their evidence package but the landlord did not provide any. The emails before me did not pertain to the end of the tenancy.

Although the tenants maintained that they gave their forwarding address to the landlord on June 27, 2016 the tenants pointed out that the tenants again provided their forwarding address on their Application for Dispute Resolution that sent to the landlord on July 21, 2016 and yet he still holds their security deposit. The landlord acknowledged that he has had the tenant's forwarding address since receiving the tenant's Application for Dispute Resolution and that he still holds their security deposit but argued the tenants did not give him a forwarding address before they filed.

Both parties provided consistent testimony that at the end of the tenancy the landlord communicated to the tenants that they were responsible for damaging the tile flooring and the tenants were in disagreement with that. It was undisputed that the tenants did not authorize the landlord to withhold any part of their security deposit in writing.

I asked the landlord whether he was still a landlord and whether he was familiar with the requirements of the Act with respect to security deposits. The landlord initially stated he was still a landlord and then he changed his statement to say he is no longer a landlord. He also stated that the tenancy came to an end because he wanted to sell the residential property but then he decided not to sell the house but claims the rental unit is still vacant.

The landlord was quite focused on the alleged damage to the tile floor during the hearing and I restricted that testimony as the landlord has not made a damage claim against the tenants. When I pointed out that he has lost the right to make claim against the security deposit for damage due to his failure to prepare condition inspection reports, the landlord submitted that he has a claim for unpaid utilities as well. I informed the parties that the landlord remains at liberty to file his own monetary claims against the tenants within the time limit for doing so.

Analysis

Unless a landlord has a legal right under the Act to retain the security deposit, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, I was not provided any information to suggest the tenants extinguished their right to return of the security deposit. Rather, it is apparent that the landlord extinguished his right to make a claim against the security deposit for damage because he failed to prepare condition inspection reports as required under the Act. The tenants did not authorize the landlord to retain the deposit in writing and the landlord has not obtained the authorization of an Arbitrator to make deductions or retain the security deposit. Accordingly, the landlord does not have the legal right to retain the security deposit.

At issue is whether the tenants provided a forwarding address to the landlord, in writing since a landlord is not required to take action with respect to the security deposit until the tenant provides a forwarding address. The tenants have the burden to prove they gave a forwarding address in writing. The burden of proof is based on the balance of probabilities.

Upon consideration of everything before me, I find the tenants were more credible than the landlord. The tenants provided consistent submissions and testimony by way of their application and testimony during the hearing. Their testimony was also supported by documentary evidence they provided. In contrast, I find the landlord's testimony was frequently changing and his differing positions were not supported by any documentary evidence. Therefore, I find that I prefer the tenants' position that they gave the landlord their forwarding address on June 27, 2016 over the landlord's denial and I am satisfied that they met their burden on proof, based on the balance of probabilities.

Having been satisfied the tenants gave a forwarding address to the landlord on June 27, 2016, and the tenancy ended on June 30, 2016, I find the landlord had until July 15, 2016 to either refund the security deposit to the tenants or file an Application to make a claim against it but the landlord failed to do so. Therefore, I find the landlord violated section 38(1) of the Act and the landlord must now pay the tenant's double the security deposit of \$1,150.00 (\$525.00 x 2) as the tenants have requested.

I further award the tenants recovery of the \$100.00 filing fee they paid for their application.

In light of all of the above, the tenants are provided a Monetary Order in the total sum of \$1,250.00 to serve and enforce upon the landlord.

Conclusion

The tenants were successful in this application and have been provided a Monetary Order in the sum of \$1,250.00 to serve and enforce upon the landlord.

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 27, 2017

Residential Tenancy Branch