



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, OLC, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

The tenant's original Application for Dispute Resolution, dated August 10, 2016, requested only the return of the pet damage and security deposits in the amount of \$785.00. On August 15, 2016 the tenant submitted an Amendment to an Application for Dispute Resolution amending the amount of the claim to double the amount of the deposits.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of double the amount of the security deposit and pet damage deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on May 28, 2013 for a 5 month, two week fixed term tenancy beginning on June 15, 2013 that converted to a month to month tenancy on December 1, 2013 for a monthly rent of \$785.00 due on the 1st of each month with a security deposit of \$392.50 and a pet damage deposit of \$392.50 paid. The agreement included clause 3 that stated, in part, "if carpets and drapes are professionally cleaned at the commencement

of the tenancy, the tenant is required to pay for professional cleaning at termination”;

- A copy of a Condition Inspection Report completed on June 15, 2013 for the move in and on July 31, 2016 for the move out. The tenant had signed the Report indicating that they did not agree that the report “fairly represents the condition of the rental unit for the following reasons: Rented carpet cleaner, no stipulations in Tenancy Act re: professionally done only.” Further in the document the tenant provided their forwarding address and signed the statement agreeing to the deductions of \$382.25 for unpaid rent/late fees; \$106.00 for carpet cleaning; and \$30.00 for repair/replacement for a total of \$518.25 to be made from both the security deposit and pet damage deposit; and
- A copy of a cheque from the landlord to the tenant dated August 9, 2016 in the amount of \$484.50.

The tenant submitted that they had not agreed to allow the landlord to make any deductions from their deposits and that the landlord had returned only approximately \$300.00 from the landlord after the tenancy ended.

The parties agreed the tenant provided his forwarding address on the date the tenancy ended. The landlord submitted that they had provided the tenant with a cheque for \$484.50 on August 9, 2016 in error. The landlord submitted that the amount provided exceeded what they had owed the tenant due to an administrative error and the landlord only retained \$266.75 of the deposits.

The tenant submitted that they had disagreed with the landlord’s requirement to have the carpets professionally cleaned at the end of the tenancy. The tenant stated that they had rented a carpet cleaner and was prepared to complete the cleaning but the landlord would not accept that.

The tenant also submitted that they did not recall signing the section of the Condition Inspection Report agreeing to any deductions and that it would have made no sense to do so when they disagreed with the reports recording of the condition of the unit and the need for professional carpet cleaning.

The tenant identified that they were not accusing the landlord of altering the Report or falsifying their signature on the Report.

Analysis

Section 38 of the *Act* states that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay, any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(4) states a landlord may retain from a security deposit or a pet damage deposit an amount if at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

In the case before me, while I agree that it is unusual to disagree with the condition of the rental unit and then agree to deductions from their deposits, I find there is no evidence before me to contradict that the tenant signed the document agreeing to the deductions.

The tenant could not confirm that they did not sign the agreement and I am satisfied that there is no evidence before me that the landlord provided a fraudulent signature on the Report. As such, I find the tenant did agree to deductions in the amount of \$518.25 from the deposits held in the amount of \$785.00.

As a result, I also find that landlord was required to return up to \$266.75 of the combined deposits. Based on the evidence of both parties I accept that the landlord returned to the tenant, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address \$484.50 or \$217.75 above the amount required to be returned.

As I have determined that the landlord was entitled to retain the amounts from the deposits that they did because the tenant agreed to the deduction, I find it is not necessary to make any determination on the tenant's claim that the landlord was not entitled to require professionally carpet cleaning.

However, I will advise both parties that if the parties agree, as part of their tenancy agreement, that the carpets must be professionally cleaned at the end of the tenancy the tenant is bound by that agreement and when they do not have the carpets professionally cleaned the landlord may claim this amount against the deposit.

I note, however, that in such a case the landlord may not simply unilaterally decide to retain the amount from the deposit. That is the landlord must either have written agreement at the end of the tenancy that the tenant agrees with the deduction or the

landlord may apply to retain the amount from the deposits in accordance with the requirements of Section 38 of the *Act*.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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: February 21, 2017

Residential Tenancy Branch