



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested a monetary Order for return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant confirmed receipt of the landlord's evidence, sent by registered mail and delivered on January 27, 2017.

The tenant named only one landlord as respondent.

The landlord received the single written submission from the tenant on February 1, 2017. The tenant supplied 33 photographs taken of the unit at the end of the tenancy and a letter issued by one of the two landlords. The tenant said this evidence could not be obtained within the required time limit. The tenant did not explain how photographs taken in July 2016 could not have been submitted at the time the application was made on August 15, 2016. As that evidence was not given to the landlord at least 14 days prior to the hearing it was set aside. The tenant was at liberty to make oral submissions.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Background and Evidence

The tenancy commenced on October 15, 2013. Rent was due on the 15th day of each month. The landlord was issued a security and pet deposit in the sum of \$700.00 each. A copy of the tenancy agreement signed by the applicant and a second tenant, A.L. was supplied as evidence.

A move-in condition inspection report was not completed.

The landlord named as a respondent met with tenant A.L. on the date the tenants vacated, July 16, 2016. A.L. and the landlord completed a move-out condition inspection report. The report was signed by both parties and referenced what was notated as a "condition inspection report and list of damages/replacement cost for details."

The landlord supplied a list of damages and replacement costs. At the bottom of this document the total sum of the security deposits was listed as \$1,400.00. Initially the parties initialed the documents, with the tenant agreeing to a deduction of \$1,269.14 from the deposits. That sum was crossed out and replaced by the sum of \$1,072.59. Below that sum the total amount of deposit to be returned was initialed and recorded as \$131.86; that amount was then increased to \$327.41.

The tenant said that his spouse/co-tenant felt pressured to sign this document and that she did not agree to the deductions the landlord made from the deposits. The tenant was asked why A.L. was not present to testify as to what occurred. A.L. was at work.

The tenant said the sums retained by the landlord were inflated and incorrect. The tenant also stated that there was a miscommunication between A.L. and the landlord and that the home was left in good condition. The tenant said that the other landlord, not named as a respondent, has now confirmed that he in fact caused some damage that the tenants paid to have repaired.

The tenant confirmed that the landlord returned \$327.41. A.L. was given a cheque on July 16, 2016. The landlord said that cheque has been cashed.

The landlord said she was shocked when she was served with the application. The landlord stated that the inspection completed with A.L. was amicable and that no pressure was placed on the tenant. The landlord agreed to reduce the sum initially requested of the tenant and that form signed by the landlord and A.L. shows the agreed reduced costs. The tenant was issued a cheque on July 16, 2016; they shook hands and the tenant left.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

Section 38(4) of the Act provides:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

From the evidence before me I find, on the balance of probabilities, that tenant A.L. completed the move-out inspection with the landlord and agreed to specific deductions from the deposit by initialing a document setting out those deductions. On the date the inspection was completed I find that A.L. initialed a document agreeing that the sum of security and pet deposits to be returned was reduced to \$327.41. That amount was given to the tenant on July 16, 2016.

I have rejected the tenants' submission that A.L. did not agree to the deductions or that A.L. was pressured or somehow a miscommunication occurred. A.L. did not attend the hearing to provide testimony or to be cross-examined in relation to the allegation that A.L. was somehow pressured to sign, agreeing to the cost for damage to the rental unit.

I found the evidence supplied by the landlord convincing and irrefutable. The tenant signed agreeing to deductions, in compliance with section 38(4) of the Act. The landlord returned the balance of the deposit to the tenant.

Therefore, I find that the claim requesting double the deposits is dismissed.

Conclusion

The application is dismissed.

This decision is final and binding and 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 14, 2017

Residential Tenancy Branch