Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing under the *Residential Tenancy Act* (the "Act") dealt with the tenants' application for return of the security and pet damage deposits, for a monetary order for compensation or loss under the Act, regulations, or tenancy agreement, and for return of the application filing fee.

One of the tenants attended on behalf of both tenants. One of the named landlords and her father, the property manager, attended on behalf of both landlords. The property manager advised that the other named landlord is his wife.

Service of the tenants' application, notice of hearing, and supporting materials was acknowledged by the landlords. The landlords did not submit any evidence.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to respond to other party, and make submissions.

Issue(s) to be Decided

Has there been a breach of s. 38 of the Act by the landlord?

Are the tenants entitled to a monetary order for damage or loss under the Act, regulation, or tenancy agreement?

Are the tenants entitled to return of the application filing fee?

Background and Evidence

It was agreed that this fixed term tenancy began on or around December 1, 2015 and ended early, on April 30, 2016, by mutual agreement. A copy of a Mutual Agreement to End Tenancy signed by both parties was in evidence. The tenants paid the landlords a security deposit of $700.00 and a pet deposit of $200.00 at the beginning of the tenancy.

It was also agreed that the tenants provided their forwarding address to the landlord for return of the security deposit on or about April 30, 2016. In a letter dated June 2, 2016 and sent by registered mail, the tenants provided the landlord with their forwarding address a second time. A copy of this letter and a registered mail receipt were in evidence. In the letter the tenants state as follows: "In addition to all of the previous correspondence and emails we have exchanged, this letter is to officially inform you that we do not authorize you to withhold any part of our damage deposit whatsoever."

It was further agreed that the landlord did not perform either incoming or outgoing condition inspection reports or file an application for authorization to retain the security and/or pet damages deposits.

The property manager acknowledged that there was no agreement in writing allowing the landlord to retain a portion of the deposits. However, he testified that the tenants agreed orally that the landlord could retain a certain amount for utilities.

The tenants' evidence included a handwritten document delivered to them at their forwarding address by the property manager. It lists the security deposit ($700.00) and the pet deposit ($200.00), along with a "fireplace surround" ($150.00) and a "shower curtain" ($20.00) as "credits" totaling $1,070.00. It lists the following as "debits": "utility bill" ($239.00); "hydro" ($242.00); "plumbers allowance" ($75.00); "items missing" (totaling $105.00); "plumbing parts removed and fireplace set and brackets . . . will be credited back when returned in their like new condition" ($661.00) and claims a "balance owing" of $409.00. The last page of this three page document calculates a refund to the tenants of $36.66 for an overcharge on the utility bill.

Also in evidence is an email dated May 12, 2016 from the tenants to the property manager responding to the handwritten document. In their email the tenants describe the document as "completely illegible" and say that they "can't make out half of the words or the intent of what you're trying to say." They also say: "Before we agree to any amount whatsoever we want photocopies provided to us of all the utilities bills, hydro and municipal." As of the date of the hearing the tenants still had not been provided with copies of these bills. However, the tenant at the hearing conceded that the amounts claimed for utilities were probably fair.

Both parties agreed that, based roughly on the calculations set out in the landlord's document, the landlord retained $461.34 from the $900.00 in deposits to cover the tenants' utilities bills and returned the balance of the deposits ($438.66) to the tenants.

There is some reference in the documentary evidence to a disagreement between the parties around whether the tenants were responsible for costs associated with garbage disposal.

The landlords claimed the tenants had caused a cabinet to be damaged when they hired a plumber who did faulty work causing a leak.

Analysis

The Act contains comprehensive provisions dealing with security and pet damage deposits. Section 38 requires that the landlord handle the deposits as follows:

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> **...**
>
> (6) If a landlord does not comply with subsection (1), the landlord
>
> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
>
> (Emphasis added)

Based on the testimony and evidence I find that the landlords have breached this section of the Act. The landlords acknowledged that they did not apply within 15 days of the end of the tenancy or receipt of the tenants' forwarding address to retain a portion of the security deposit, as required by s. 38.

Nor did the landlords and tenants agree in writing that an amount could be retained. Section 38(4) allows a landlord to retain an amount from a 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 landlord." There was no evidence to show that the tenants agreed, in writing, that the landlord could retain any portion of the deposits. The only written document concerning the amounts withheld was the landlord's handwritten document delivered to the tenants at their new address. However, that document does not establish that the tenants consented to the landlord's withholding of an amount for utilities. It is not signed by the tenants. At the hearing the tenant stated testified that in fact the tenants had not consented. This is consistent with the tenants'

email of May 12 and their letter of June 2. In their email of May 12, the tenants quite reasonably ask for copies of the bills in advance of consenting to deductions from their deposits.

The security deposit is held in trust for the tenant by the landlord, who may not simply keep it without establishing the right to do so or obtaining the tenant's agreement. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. Here, as set out above, there is no written agreement as to the amount to be retained by the landlords, and the landlords have not applied for authorization to retain any monies.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, that the landlords pay the tenants double the security and the pet damage deposits. Residential Tenancy Policy Guideline #17 sets out certain scenarios that may arise in an application for return of double the security and/or pet damage deposits. Example A in section 5 is most like the situation before me. Here, the tenants have paid $900.00 in deposits. The landlord has withheld $461.34 without the tenants' consent. Accordingly, I first double the deposit amount, and then subtract the amount already returned to the tenants. The tenants are thus owed $1,800.00 ($900 x 2) less the $438.66 already returned to them, for a total of $1,361.34.

The landlords may still file an application for damages, which may include losses for utility bills. However, the security and pet deposits have been conclusively dealt with in this hearing. I note that the tenant agreed at the hearing that the amounts claimed for utilities were probably fair, and for this reason the parties may wish to reach their own agreement with respect to the utilities. As the landlords have not brought their own application I cannot deal with utilities in this decision.

As set out above, the landlords have breached s. 38 of the Act. They have also omitted conduct incoming or outgoing condition inspection reports in accordance with the Act, and would have extinguished their right to claim against the security deposit under sections 24(2) and 36(2) even if they had not been in breach of s. 38. The landlords are in the business of renting and are required to abide by the laws pertaining to residential tenancies.

In their application the tenants also seek an award for the shower curtain and fireplace surround that the landlords agreed to purchase. These items are set out in the landlord's handwritten document and together total $170.00. Sections 7 and 67 of the Act allow a party who has suffered loss or damage arising from breach of the Act, regulations, or tenancy agreement to claim compensation. The tenants' claim for the items that were sold to the landlords is outside of these categories of loss, however. As these claims are not within the jurisdiction of the Act, I dismiss this portion of the tenants' claim without leave to reapply.

As the tenants were successful in this application, I find that they are entitled to recover the $100.00 filing fee. Accordingly, I make a total award of $**1,461.34** in the tenants' favour.

Conclusion

The tenants are given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with it, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: February 28, 2017

Residential Tenancy Branch