



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding royal lepage wolstencroft realty/Hanson
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

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

The hearing was conducted via teleconference and was attended by both tenants; their agent; and an agent for the landlord.

While both parties provided substantial testimony regarding events and the condition of the rental unit at the end of the tenancy, this decision records only submissions and findings relevant to the claim.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on July 1, 2015 as a 1 year fixed term tenancy that converted to a month to month tenancy on July 1, 2016 for a monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00 paid. The parties agreed the tenancy ended on July 31, 2016.

The parties also agreed the tenants provided their forwarding address to the landlord on Condition Inspection Report completed on July 31, 2016. The parties confirmed the landlord continues to retain the security deposit.

The landlord submits that the tenants signed the Condition Inspection Report agreeing to deductions from the security deposit because of damage to the flooring and patio. In support of this position the landlord submitted a copy of the Report.

The landlord referred specifically to the section of the Report signed by the tenants that stated they "agree to the following deductions from my security and/or pet damage deposit". While there is no specified amounts the handwritten notation states: "floor damage repair and patio burns repair".

The landlord submitted that at the time of the move out inspection they did not know the extent of the repairs required or any possible costs. The landlord testified that they explored all possible scenarios to minimize the costs of the flooring repairs but in the end they determined that they had to replace all of the flooring.

The tenants submit that they had not heard from the landlord as to the amount of the cost of repairs and it was not until they advised the landlord in late October 2016 that they intended to seek arbitration on the return of the deposit that the landlord obtained and provided an estimate of the cost of repairs.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(4) states a landlord may retain an amount from a security deposit or a pet damage deposit 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.

I note the language of Section 38(4) specifically requires that the tenant agrees in writing that the landlord may retain an "amount". In the case before me, I acknowledge the landlord did not specify an amount because at the time the tenants signed the agreement for deductions they did not have any idea as to what amount they would be seeking to retain.

As a result, I find the tenants did not agree in writing to any specific amount for the landlord to retain from the security deposit. I find it would be unfair for any tenant to sign a document agreeing to a deduction when the amount of the deduction is unknown to them. Therefore, I find the landlord did not have authority under Section 38(4) to withhold any amounts from the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As I have determined that the landlord did not have authority under Section 38(4) to withhold any amount, I find the landlord has failed to comply with the requirements of Section 38(1) to return the security deposit or file an Application for Dispute Resolution seeking to claim against the deposit within 15 days of the end of the tenancy and receipt of the tenants' forwarding address.

Therefore, I find, pursuant to Section 38(6) the tenants are entitled to return of double the amount of the security deposit.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,200.00** comprised of \$1,100.00 double the security deposit and the \$100.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced 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: May 17, 2017

Residential Tenancy Branch