



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$1275 for double the security deposit.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord at the end of April 2017 as the landlord acknowledged service. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to the return of double the security deposit/pet deposit?

Background and Evidence

The parties entered into a written tenancy agreement in 2010 which provided that the term was month to month. The rent was subsidized and the Tenant was paying \$466 per month payable in advance at the end of the tenancy. The tenant(s) paid a security deposit of \$600 at the start of the tenancy.

The tenancy ended on April 30, 2015. The tenant moved to another rental unit in the same complex.

The tenant acknowledged she has not provided the landlord with her forwarding address in writing. She testified she moved to the same complex approximately away from the rental unit and the landlord was fully aware of where she was residing and continues to reside.

The landlord testified the tenant has agreed in writing the landlord could retain the security deposit. Further, the landlord provided evidence that the landlord has incurred charges to clean and repair damages caused by the Tenant that exceed the amount of the deposit.

The tenant testified as follows:

- She did not agree the landlord could retain the security deposit.
- The landlord added things to the Condition Inspection Report after she signed it.
- She did not cause the damage to the door frame alleged by the landlord.
- The landlord refused to allow her to make repairs.

The landlord testified as follows:

- The Condition Inspection Report signed by the Tenant indicates the tenant had agreed the landlord could retain the security deposit. It states the tenant agreed “to the following deductions from my security deposit as per Damage to Rental unit which tenant is responsible.” The landlord testified at the time this was signed she estimates as to the cost of repair that exceeded the amount of the security deposit.
- She denies that the landlord added to the Condition Inspection Report.
- The tenancy ended at the end of April. On May 22, 2015 the landlord provided the tenant with estimates as to the cost of the work to be done. The tenant approached the landlord with a quotation from a contractor with requesting she be permitted to complete the work to repair a damaged door frame. On June 16, 2015 the landlord agreed in writing authorizing the Tenant to have the broken exterior door frame and broken window in the door repaired as per the invoice you submitted from GM and subject to additional terms.
- In early July the landlord saw the work was not being done by GM as agreed and told the Tenant to stop work.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Section 38 and 39 of the Act provides as follows:

Return of security deposit and pet damage deposit

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.
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
- (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.
- (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.

...

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Analysis

After carefully considering all of the evidence I determined the tenant failed to establish a claim for the doubling of the security deposit for the following reasons:

- The tenant failed to provide the landlord with her forwarding address in writing and the time to do so has expired. I determined the requirement of the tenant to provide the landlord with her forwarding address in writing is a requirement that must be met before the obligation of the landlord to return the security deposit or to file a claim is triggered. The fact that the landlord knows where the tenant resides is not sufficient. I determined this obligation under Act not only gives the landlord notice of where to serve the tenant with an Application for Dispute Resolution but also gives the landlord notice of the intention of the tenant to make a claim should the landlord failed to file an application.

- Further, I determined the tenant agreed in writing the landlord could keep the security deposit. I do not accept the testimony of the Tenant that she did not sign the Condition Inspection Report. The copy that she provided as well as the landlord's copy included the her signature. The tenant alleged but failed to prove the landlord added to the Condition Inspection Report. The tenant denied she was responsible for the damage. This is inconsistent with her attempts to repair the damage. Further, I determined the landlord was entitled to stop the tenant's attempt to repair the door frame when the landlord was attempting to make the repairs with someone else other than the contractor she proposed.
- In summary I determined the tenant failed to comply with the provisions of the Residential Tenancy Act. In particular she failed to provide the landlord with a forwarding address and the time to do so has passed. Further, I determined she agreed in writing the landlord could retain the security deposit.
- I dismissed the tenant's claim of \$75 for the cost of a door frame as the tenant failed to prove the landlord agreed to this.

Conclusion:

In conclusion I ordered the tenant's application be dismissed without leave to re-apply.

This decision is final and binding on both parties.

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: June 15, 2017

Residential Tenancy Branch