Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAIN STREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD FF

Introduction

Both parties attended the hearing and the tenant provided evidence that she had served the landlord with the Application for Dispute Resolution by registered mail and personally with his forwarding address on the move-out report. The landlord agreed they had received them as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) An Order to return double the security deposit pursuant to Section 38; and
b) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that she is entitled to the return of double the security deposit according to section 38 of the Act?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said she had paid a security deposit of $425 and a pet damage deposit of $200 and agreed to rent the unit for $850 (currently $871.25) a month. The tenant vacated the unit on October 15, 2016 and provided her forwarding address in writing on October 1, 2016 on her move out condition inspection report. She said she agreed the landlord could keep $425 of her deposit for she had decided to stay an extra two weeks to October 15, 2016 but she expected to get $189.38 of her deposits back because of what the landlord said at the time.

The landlord provided a copy of the October 1, 2016 move-report inspection report in evidence. He said damages are not noted because the tenant's father was there and said he would fix the blind; he works for the landlord. The landlord said another report was done on October 15, 2016 when the tenant was supposed to vacate but she did not return the key until the 18th. He said they had not filed an Application to claim damages against the tenant for she clearly stated and signed on her October 1, 2016 report that

she agreed to deductions of $425 and $200 (her full deposits) from her deposits. He said the balance of $189.38 was not returned for she did not pay her last hydro bill of $142.91 and did not clean sufficiently. The tenant agreed she had not paid her last hydro bill but said she had given her new address to the hydro company and had received no bill. The landlord said hydro told them that there was something wrong with the address the tenant had given to them and they could not send the bill to her.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

The Residential Tenancy Act provides:

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.
(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.
(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.

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

However, I find in this case that the tenant signed the move-out report on October 1, 2016 and agreed the landlord could retain both deposits so I find the landlord could retain the deposits pursuant to section 38(4) above. Although she said she did not understand that she was agreeing to full deductions of her deposits, I find she spoke in a knowledgeable, intelligent manner on the telephone so I do not find it credible that she did not understand what she was signing. Furthermore, she did admit that she knew she was agreeing to forfeit the $425 security deposit for unpaid rent and that her father was present at the time. I find it improbable that she did not understand she was also agreeing to have the landlord retain the $200 pet damage deposit for both deposits are written clearly in line on the same section just above her signature. I find her application without merit and dismiss the application.

I make no findings on the landlord's damages or costs as they have filed no Application to claim them.

Conclusion:

I dismiss the Application of the tenant in its entirety without leave to reapply. I find her not entitled to recover her filing fee due to her lack of success.

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 20, 2017

Residential Tenancy Branch