



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Masi Holdings LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNSD

Introduction

This is an application brought by the Landlord(s) requesting an order to retain a portion of the security deposit for damages, and requesting an order for recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the landlords have the right to keep a portion of the security deposit for damages that they allege were caused by the tenants.

Background and Evidence

The parties agree that a security deposit of \$1650.00 was paid on November 28, 2013 and that this tenancy began on December 10, 2013.

The parties also agree that the tenancy ended on March 24, 2016.

The parties also agree that a move out inspection report was not done at the end of the tenancy.

Analysis

Sections 35 and 36(2) of the Residential Tenancy Act state:

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
- (b) the tenant has abandoned the rental unit.

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property **is extinguished** if the landlord (*my emphasis*)

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Further, Section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

In this case, since the landlord admits that he did not do the moveout inspection report at the end of the tenancy, the landlord did not have the right to claim against the security deposit for damages, and therefore was required to return the full deposit within 15 days of receiving the tenants forwarding address in writing. The landlord has not returned the tenants full security deposit.

This tenancy ended on March 24, 2016 and the landlord had a forwarding address in writing by January 26, 2017 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant, less any amount already returned.

In this case the tenants paid a deposit of \$1650.00 and therefore the landlord is required to pay \$3300.00 less the \$792.77 that was already returned, for a difference of \$2507.23.

Conclusion

It is my decision therefore, pursuant to section 62 of the Residential Tenancy Act, that this application to retain a portion of the security deposit is dismissed and I have issued a monetary order for the landlords to pay \$2507.23 to the tenants.

I also order that the landlords bear the \$100.00 cost of the filing fee.

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 08, 2017

Residential Tenancy Branch