Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNSD

Introduction

This hearing was scheduled to hear the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") to:

- retain the tenants' security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenants and the landlord attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that an Application for Dispute Resolution and evidentiary package was sent by way of Canada Post Registered Mail to the tenants on January 28, 2017. The tenants acknowledged receipt of these packages. Pursuant to sections 88 and 89 of the *Act* the tenants are found to have been duly served with these documents in accordance with the *Act*.

Issue(s) to be Decided

Can the landlord retain the security deposit?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

Testimony was provided by both parties that this tenancy began on December 1, 2011 and ended on November 30, 2016. Rent was $1,675.00 per month and two deposits of

$837.50 for pet and security purposes were collected at the outset of the tenancy and continue to be held by the landlord.

During the course of the hearing the landlord explained that she was looking to retain $800.00 from the security deposit in satisfaction for damage that had been done to the carpet. The landlord explained that the tenants' use of an automatic vacuum cleaner had resulted in several pulls to the carpet. As a result of the damage to the carpet, the landlord is seeking to recover the cost of carpet repairs.

The tenants deny ever owning the type of vacuum described by the landlord. Furthermore, they stated that the damage done to the carpet was negligible and consisted of some minor pulling of the threads.

A condition inspection of the rental unit was performed together by the parties at the start of the tenancy. The parties disagreed on whether a condition inspection had been performed at the conclusion of the tenancy. The landlord contended that on November 19, 2016 she both performed a condition inspection of the rental unit, and showed the rental unit to a new, prospective tenant. The landlord explained that following this inspection, she forwarded a copy of the condition inspection report to the tenants on December 17, 2016 noting the damage to the rental unit. Following receipt of this report, the tenants strongly objected to its contents. On January 18, 2017 the landlord applied to retain the tenants' security deposit.

The tenants stated that they never performed a condition inspection of the rental unit with the landlord, they did not agree to surrender any part of their deposit to the landlord, they did not sign any formal documents which they considered to be a condition inspection report and they did not consider the November 19, 2016 visit of the landlord to be a condition inspection of the rental unit.

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain these deposits 15 days after the *later* of the end of a tenancy, or upon receipt of a tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained a tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). Under section

38(3)(b) a landlord may retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

Testimony from both parties confirmed that this tenancy concluded on November 30, 2016. During the hearing the landlord could not recall when she received the tenants' forwarding address, and she was only able to explain that it was received by text message. Evidence produced to the hearing as part of the tenants' application package demonstrates that a letter dated December 15, 2016 and titled 'Condition Inspection Report' contained the tenants' forwarding address.

Based on the evidence before me, I find that the landlord had the tenants' forwarding address on December 15, 2016 and had until December 30, 2016 to make an application to retain the tenants' security deposit under section 38(1) of the *Act.* This section says, "Except as provided in subsection (3) or (4)(a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the *landlord must repay* any security or pet deposits to the tenant or make an application for dispute resolution claiming against the security or pet deposits." It should be noted that subsection 3 and 4(a) of section 38(1) provide direction on instances where a landlord may retain a security or pet deposit. These are very narrow parameters and apply only when an Arbitrator has previously ordered the tenant to pay the landlord, when a pet or security deposit remains unpaid at the end of the tenancy, when a tenant agrees in writing, or when an Arbitrator orders that a landlord may retain the amount.

As the landlord had not applied for dispute resolution by December 30, 2016, has not received the tenants' written authorization to retain the security or pet deposits, and has failed to perform a condition inspection as described by section 35 of the *Act*, the landlord must, pursuant to section 38 of the *Act,* return to the tenants' double their pet and security deposit.

The landlord must bear the cost of her own filing fee for this application.

Conclusion

Pursuant to the *Residential Policy Guideline* #17, when dismissing an unsuccessful application by the landlord against the deposit, I must order the landlord to return the deposits to the tenant. Therefore, I issue a Monetary Order in the tenants' favour in the amount of $3,275.00 against the landlord based on the following monetary awards:

Item	**Amount**
Return of Double Pet Deposit (2 x $837.50 = $1,675.00)	$1,675.00
Return of Double Security Deposit less amount paid out (2 x $800.00 = $1,600.00)	1,600.00
Total =	$3,275.00

The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: July 25, 2017

Residential Tenancy Branch