



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRANSPACIFIC REALTY ADVISORS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD

Introduction

The tenant applied for return of all or a portion of his security deposit pursuant to section 38 and any other monetary amount that he is entitled to pursuant to section 67.

Both parties attended this hearing. The tenant attended the hearing with two advocates to assist him. The landlord was represented by 3 agents – a building manager and 2 property managers. Both parties had an opportunity to present evidence and make submissions. The landlord confirmed receipt of the tenant's application and evidentiary materials submitted with his application. The tenant confirmed receipt of the landlord's 69 pages of materials for this hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of his security deposit?

Is the tenant entitled to a monetary order against the landlord for failure to return the security deposit in accordance with the Act?

Background and Evidence

This tenancy began on January 1, 2016 with a monthly rental amount of \$790.00 payable on the first of each month. A copy of the residential tenancy agreement was submitted as evidence for this hearing. The tenant vacated the rental unit on May 31, 2017 as a result of the issuance of a 1 Month Notice to End Tenancy by the landlord. The tenant applied on June 27, 2017 to recover his \$395.00 security deposit paid by the tenant at the outset of this tenancy.

The landlord was represented at this hearing by two property managers and a building manager. The representatives confirmed that the landlord did not make an application to retain the tenant's security deposit. The representatives (on behalf of the landlord) testified that the tenant and two support staff were present at the move-out inspection of the rental unit. The landlord's building manager testified that one of the support staff for the tenant reviewed the condition inspection report on the day of the move-out inspection and that, after the support staff reviewed the report, the tenant signed the report.

A copy of the condition inspection report was submitted as evidence for this hearing. The move-in report indicates that the unit's carpets were professionally cleaned prior to the tenancy and the walls had been painted. The report also indicated that most items were in satisfactory to good condition at move-in. The move-out portion of the report indicated that the tenant was required to pay the cost of a bed bug treatment; carpet cleaning and extra carpet stain removal; window cover cleaning; door repair; wall repair; and painting. The tenant signed the condition inspection report at move-in and move-out. He also provided his forwarding address on the move-out report.

The tenant's advocate in attendance for this hearing testified that she was present at the move-out inspection. She acknowledged that another support staff was also at the move-out inspection on behalf of the tenant. The tenant's advocate testified that she stepped away for a period of time during the move-out inspection and, during that time, the tenant was asked to sign the move-out inspection. The tenant's advocate submitted that the landlord knew or ought to have known that the tenant was intoxicated at the move-out inspection and incapable of giving his consent to retain the security deposit. She submitted that the form should not have been signed without an opportunity for her to review it as the other support staff/representative was less familiar with residential tenancy matters.

The landlord's building manager, present when the tenant signed the move-out condition inspection report, testified that he did not notice signs of impairment from the tenant. The landlord's property manager submitted that since the tenant was alone when he conducted the *move-in* inspection and was able to sign the report and the tenancy agreement alone at that time, he should have been capable of signing the report at move-out as well. She testified that, during the course of the tenancy, no one informed the landlord that the tenant was subject to care or that he required someone else to sign or review documents for him. She says that, over the course of the tenancy, she dealt directly with the tenant.

Analysis

In this circumstance, the tenant acknowledges that he signed a condition inspection report that included his agreement for the landlord to retain his security deposit. He seeks its return on the basis that he was not fit to sign the move-out inspection report and to agree to the landlord's retention of the deposit.

With respect to the return of a security deposit, section 38 of the *Act* sets out the requirements of a landlord. Within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, the landlord must either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. However, there are exceptions to the landlord's obligation to return or file to retain the deposit.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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." The tenant testified that he signed the move-out report. That report indicated clearly the tenant's agreement to allow the landlord to retain his security deposit towards the damage and costs relating to his tenancy. The move-out report indicates that the amount of the tenant's security deposit would not cover all of the landlord's costs.

The tenant's representative indicated that the tenant was unable to agree because he was intoxicated. The tenant provided brief testimony to indicate he could not remember that move-out day entirely but did remember signing the form. He stated that he felt pressure to do so. I accept the testimony of the landlord's representatives that the tenant was not outwardly or obviously intoxicated. I accept the testimony of the building manager that he would not have had the tenant sign paperwork if the tenant appeared intoxicated or unable to understand what he was signing. Further, I accept the testimony of the building manager that he described the move-out condition inspection report both to the tenant and to the tenant's support staff present at that time.

I find that there is evidence, in the condition inspection report itself and the testimony of the building manager that the tenant appeared competent to sign the move-out inspection report. Firstly, he signed the report in a legible manner and provided his forwarding address. Secondly, he had the assistance of a support person who may not have been an expert in residential tenancy matters but who was acting on the tenant's behalf and in the tenant's interests. I find that the tenant's evidence, testimony of the tenant and the tenant's representative/advocate regarding the tenant's intoxication are

insufficient to rebut the evidence of the landlord, both documentary and testimonial. I find that the tenant gave the landlord written authorization at the end of this tenancy to retain his security deposit and therefore section 38(4) applies.

Based on the sworn evidence of the building manager before me, I find that the landlord had the permission of the tenant to retain his security deposit towards the costs incurred by the landlord as a result of this tenancy. I accept the evidence of the landlord regarding the condition of the unit at move-in and the deteriorated condition of the rental unit at move-out. While the tenant stated that he felt pressure to sign the tenancy agreement, I find no evidence sufficient to prove undue pressure applied to the tenant to sign the move-out report. I find that the tenant provided insufficient evidence to show that he was incapacitated by alcohol or under duress and therefore not responsible for the agreement made between the two parties.

Under these circumstances, I dismiss the tenant's application to recover his security deposit and any other monetary amount as a result of the actions of the landlord.

Conclusion

I dismiss the tenant's application in its entirety.

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: January 4, 2018

Residential Tenancy Branch