



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for the return of all or a portion of her security deposit pursuant to section 38.

Both parties attended this hearing and were given an opportunity to present sworn testimony, documentary evidence and submissions. One witness attended on behalf of the tenant. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and documentary evidence. The tenant confirmed receipt of the landlord's evidence provided on February 2, 2018.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit and, if so, is the tenant entitled to an amount equivalent to deposit for the landlord's contravention of the *Act*?

Background and Evidence

This tenancy began on April 1, 2016 with a monthly rental amount of \$1100.00 payable on the 1st of each month. The tenant notified the landlord in writing on May 31, 2017 that she intended to vacate the rental unit. On the same date, the tenant provided her forwarding address to the landlord. The tenant provided undisputed testimony that she vacated the rental unit on June 10, 2017. The tenant claims the landlord has not returned her full \$550.00 security deposit in accordance with the Act: she testified that she received a cheque for \$242.38 after filing this application.

The landlord did not make an application to the Residential Tenancy Branch to retain all or a portion of the tenant's security deposit. She testified that the tenant agreed to the

deductions she made to the tenant's security deposit. The landlord testified that she was entitled, by the agreement of the tenant, to the following deductions,

Landlord's deductions from Tenant's Security Deposit	Amount
Security Deposit – paid to Landlord	\$550.00
Carpet cleaning	-152.50
Replace burnt out light bulbs	-16.99
Stopper for Sink	-6.90
50% of utilities during tenancy (unpaid portion – my calculation based on documents provided**)	-109.33
Portion of Security Deposit after deductions	\$264.28

**The amount described as 50% utilities is an amount calculated by me based on the utility bill information submitted.

The landlord relied on the verbal agreement of the tenant at the condition inspection and the details from the condition inspection report to justify the retention of a portion of the tenant's security deposit. The landlord submitted documentary evidence for this hearing including a copy of the condition inspection report. The report does not note an amount for deduction or have any signatures in the portion of the report where a deduction should be indicated on the report. The landlord recorded the following items as "damage to the rental unit or residential property by LL; utilities still outstanding. former cabinet to be repaired by LL."

The tenant signed indicating that the report "fairly represents the condition of the rental unit. Within the report itself, there is an indication that the carpets need to be cleaned. She provided an invoice for the carpet cleaning in the amount of \$152.50 dated June 23, 2017. The landlord submitted a receipt for a sink stopper dated June 24, 2017 for \$6.90 before tax (tax totaled an additional 83 cents). She submitted copies of receipts dating prior to the tenancy (2015) for pot light bulbs. She testified that, at that time, she bought a store of light bulbs and was able to use those bulbs within the rental unit at the end tenancy. She testified that the tenant was responsible for 50% of the utilities and submitted a copy of the remaining utilities outstanding from this tenancy.

The landlord testified that she was not aware of the legislated requirements regarding deposits - she relied on the verbal agreement of the tenant and the details from the condition inspection report to justify the retention of a portion of the tenant's security deposit.

The tenant testified that, at the end of the tenancy, she spent two days cleaning the rental unit. She provided undisputed testimony that she paid for additional days in the rental unit. She testified that she took extra time to ensure the rental unit was thoroughly cleaned. The tenant testified that the landlord conducted a very extensive condition inspection at move out that took a long time. She testified that the landlord inspected every item of the rental unit on the condition inspection list. The tenant testified that the landlord did not provide her with a copy of the condition inspection report at the end of the move-out inspection. The tenant provided undisputed testimony that, as of the date of this hearing, she had not received a full, complete condition inspection report from the landlord.

The tenant testified that she made some minor and specific concessions to the landlord during the move-out inspection. The tenant testified that she agreed that a cupboard hinge was damaged and that the landlord would provide an amount for the hinge to her later so that she could compensate the landlord. The landlord indicated that the cost of the hinge was negligible and she did not charge the tenant for it. The tenant referred to email correspondence between the parties submitted for this hearing as proof that she did not agree to a deduction in a specific amount prior to this hearing. The tenant testified that after she filed her application but prior to this hearing, the landlord returned \$242.38 to her in a cheque sent by registered mail.

The tenant's witness testified that she visited the tenant during the course of the testimony and that she helped the tenant clean at the end of the tenancy. She stated that she was not present at the move-out condition inspection. The witness testified that the tenant went beyond what was required in cleaning at move-out because she was very nervous about the high expectations of the landlord. She testified that she saw the condition of the unit at the end of the tenancy – she testified that the rental unit was spotless and the carpets were clean (but had not been professionally cleaned).

Analysis

Section 38(1) of the *Act* requires 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, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord 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 return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the

triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

I note, for the benefit of the parties, that the landlord's right to retain all or a portion of the tenant's security deposit is also extinguished when the tenant is not provided with a copy of the condition inspection report in accordance with section 35(4) and 36(2)(c) of the Act. I accept the tenant's evidence for this hearing that the landlord did not provide her with a copy of the condition inspection report as required by the Act.

In this case, the landlord was informed of the tenant's forwarding address in writing prior to the end of the tenancy. The parties agreed that the tenant vacated the rental unit on June 10, 2017. Therefore, the landlord had 15 days after June 10, 2017 to take one of the actions outlined above. The landlord testified that she was not aware of any time-limits regarding deposits - she relied on the agreement of the tenant, the tenancy agreement itself and the details of the condition inspection report to justify the retention of \$242.38 of the \$550.00 deposit. I find that the landlord has contravened the Act by failing to receive written authorization to retain a portion of the security deposit, apply to retain all or a portion of the security deposit or to return the full security deposit to the tenant.

The tenancy agreement reflects a standard residential tenancy agreement form with conditions that confirm with the *Residential Tenancy Act*. At this hearing, the landlord referred to the Residential Tenancy Policy Guideline No. 1 includes the following information regarding carpets – she submitted that a tenant is required to pay for carpet cleaning after a year of tenancy. The guideline indicates,

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens...
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. **Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year...**
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets ... or if he or she smoked in the premises.

[emphasis added]

I accept the testimony of the tenant and her witness that the carpets were not very clean when she first moved in. However, the tenant also candidly agreed that the landlord had her carpets cleaned shortly after the start of her tenancy. The tenant resided in the rental unit for 14 months and her residential tenancy agreement reflects the general conditions applicable to clean-up at the end of a tenancy. Therefore, based on the candid admissions of the tenant, including that she had agreed in principle (if not in amount) to pay for the cleaning of the carpet and the obligations of a tenant under the Act at the end of a tenancy, I find that the landlord is entitled to retain \$152.50 – the cost of carpet cleaning.

With respect to the other items that the landlord deducted from the tenant's security deposit, I find that the landlord's right to retain the tenant's security deposit was largely extinguished by her failure to convey the costs, in the form of receipts to the tenant and in her failure to communicate with respect to the deposit, or take the required steps under the Act, within a reasonable period of time. The email and text communication between the parties provides evidence to support the tenant's position that the landlord only communicated amounts for deduction clearly to the tenant well after the appropriate timeline to do so. I also accept the evidence of the tenant that showed the

With respect to the landlord's submission that she is entitled to the payment of outstanding utilities, the residential tenancy agreement submitted for this hearing does not include an indication that an additional amount for utilities was agreed upon. I accept the tenant's testimony that she was not advised, in a clear manner, what her obligations were, if any, towards utilities. Therefore, without a written agreement to consider, I cannot award the landlord an amount with respect to outstanding utilities costs.

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." I accept the argument of the tenant that she did not agree to an amount with the landlord. There is insufficient evidence of proof of an agreement between the parties. The landlord failed to take steps towards her legislated obligations with respect to a security deposit. The landlord did not submit sufficient evidence of the details of an agreement at the end of tenancy between these parties. Therefore, I find that section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The tenant sought the return of her security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenant's deposit. The landlord returned a portion of the security deposit after the tenant filed her application. The landlord stated in her submissions that she was not aware of her obligations under the Act with respect to security deposits. Given that the landlord did not return the tenant's deposit or make an application for the tenant's deposit within the required timelines, in contravention of section 38 of the Act I find that the tenant is entitled to a monetary order including \$397.50 for the return of the amount of her security deposit after carpet cleaning.

With respect to the other items claimed by the landlord, as above, I find that the landlord did not provide sufficient evidence to support her testimony that the tenant also agreed to a to be determined amount for; a sink stopper or burnt out light bulbs.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the evidence of the parties before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant gave sworn oral testimony that she has not waived her right to obtain a payment pursuant to section 38 of the Act owing as a result of the landlord's failure to abide by the provisions of that section of the Act. Under these circumstances and in accordance with section 38(6) of the Act, I find that the tenant is therefore entitled to a total monetary order amounting to double the value of her security

deposits with any interest calculated on the original amount only and reduced by the amount of the carpet cleaning (\$152.50). No interest is payable for this period.

Conclusion

I issue a monetary Order in favour of the tenant as follows:

Item	Amount
Return of Security Deposit (\$550 - \$152.50 carpets)	\$397.50
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	397.50
Total Monetary Order to Tenant	\$795.00

The tenant is provided with this 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: March 26, 2018

Residential Tenancy Branch