Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for authorization to obtain a return of their security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing (two tenants and one landlord). Both parties were given a full opportunity to be heard, to present their testimony, and to make submissions. The landlord attending this hearing (hereinafter referred to as "the landlord") acknowledged receipt of the tenants' Application for Dispute Resolution and their documentary evidence. Tenant BS confirmed receipt of the landlords' documentary evidence submitted for this hearing.

Issue(s) to be Decided

Are the tenants entitled to recover their security deposit? Are the tenants entitled to an amount equivalent to their combined deposits for the landlords' contravention of the *Act*? Are the tenants entitled to recover their filing fee for this application?

Background and Evidence

This month-to-month tenancy began on July 1, 2015 with a monthly rental amount of $625.00. No written residential tenancy agreement was created with respect to this tenancy. The landlords continue to hold a $312.50 security deposit paid at the outset of the tenancy (July 2016) and $312.50 pet damage deposit paid by the tenants during the tenancy (September 2016). The tenants applied for the return of their deposits, an amount equivalent to the tenants' security deposit as a result of the landlords' failure to return the deposit in accordance with the Act and the filing fee for this application.

The tenants vacated the rental unit on August 31, 2016. Both parties agreed that the tenants purchased another unit in the same condominium complex. Tenant BS testified that a move-out walk-through inspection of the rental unit was scheduled for August 31, 2016 at 1:00 p.m. however, when she arrived early in the day to do some final cleaning, she became aware that the landlords had already entered the rental unit. She testified that she believes the landlords' photographic evidence was taken at that time. The landlord confirmed that she had entered the rental unit prior to the condition inspection. She testified that she believes she entered the unit approximately 15 minutes prior to the scheduled condition inspection. The landlord testified that she pulled out the refrigerator and stove in the unit at that time.

Tenant BS submitted that, during the tenancy, she purchased grab bars to be installed in the unit for her husband. She testified that the landlord installed the grab bars in the rental unit and that the grab bars remain in the unit but that the landlords have not reimbursed her for the cost of the grab bars. The tenants provided an order request form indicating that the tenant had ordered grab bars on December 2015 and relied on banking information showing a $37.01 payment on the December 2, 2015 to the same company. The landlord did not comment on whether she had agreed to compensate the tenant but she agreed that the grab bars were installed.

Tenant BS testified that the landlords were aware of their forwarding address – they simply moved to a different unit in the building. She testified that the landlord was aware of the move prior to the tenants vacating the rental unit. The landlord confirmed that she was aware the tenants were moving to another unit in the building. Tenant BS provided undisputed testimony that the tenants' post box number remained the same before, during and after this tenancy. The tenants wrote a letter to the landlords on July 13, 2017 requesting the return of their security deposit. The tenants submitted the registered mail information confirming the receipt by the landlords of the July 13, 2017 letter. The letter included the Residential Tenancy Branch regulation information regarding a landlord's obligation with respect to a security deposit. It read, in part,

> …*There was no damage to your condo, and the place was spotless when we left. Any "damage" was normal wear and tear of having tenants in the condo for a year.*
>
> *Your prompt attention to this matter is greatly appreciated.*

The landlord confirmed that she retained the tenants' security and pet damage deposit. A letter from the landlords to the tenants dated September 14, 2016 stated that the landlords would not return any of the tenants' security deposit. A second letter, sent July 16, 2017 (in response to the tenants' request for the return of their deposit) reiterated that the landlord would not return any of the tenants' deposits. Both letters indicated a need to repair holes in the walls, clean the rental unit and replace light bulbs. The landlords' letter to the tenant dated July 16, 2017 explained that $325.00 remained in unpaid rent from August 2016, that the floor cleaning, carpet steaming, wall repair, light bulb replacement and general cleaning was in excess of the $300.00 remaining of the tenants' deposits held by the landlords.

The landlord confirmed that she did not create a condition inspection report at move-in or move-out but testified that she took photographs of the rental unit the day after the tenants vacated the rental unit to show the condition the rental unit at the end of the tenancy. The landlords submitted photographs testifying that the photographs conveyed the dirty condition of the rental unit. The photographs included;

- Grease spill on side of stove;
- Dirt in window sills;
- A tub drain and tub area surrounding the drain that does not appear to be dirty;
- A somewhat unclean toilet bowl;
- Some photographs showing gutters or other exterior areas; and
- Some blurry photographs of other areas of the home.

During her testimony, the landlord confirmed that she did not make an application to retain the tenants' security or pet damage deposits: she testified that she was not aware that she was required to do so. She submitted that she was entitled to retain the deposits to recover unpaid rent in August 2016 ($325.00); the $12.97 cost of lightbulb replacement; and 7.5 hours of her cleaning of the unit at $25.00 per hour.

The tenants acknowledged that they had only paid $325.00 to the landlords on August 3, 2016. The tenants testified that they paid the remainder of the rent "on or about" August 5, 2016. They denied failing to pay the remainder of August 2016 rent. They testified that they provided the final $325.00 to the landlords in cash.

Analysis

With respect to the landlords' claim regarding the condition of the rental unit, I accept the testimony of both tenants that the rental unit was left in satisfactory condition. I also accept the testimony of Tenant BS that the repairs needed to the rental unit had been identified and passed on to the landlords by the tenants during the course of the tenancy. I find that the testimony of the two tenants was internally consistent and consistent with each other. As well, I find that the documentary evidence submitted for this hearing generally supports their version of events. I find that the photographs submitted by the landlords were blurry, close-up to certain specific items (toilet, stove) and general unhelpful in assessing the overall condition of the rental unit.

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 and pet damage 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 deposits, and the landlord must return the tenant's security and pet damage deposits plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security and pet damage deposits (section 38(6) of the *Act*).

With respect to the return of the security and pet damage deposits, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address in writing. In this case, the landlord testified that she was aware the tenants were moving to a downstairs unit in the same building. Further, I accept the undisputed testimony of Tenant BS that the tenants' post box remained the same during and after their tenancy. While the landlords were not provided a formal written forwarding address, the common sense interpretation of the evidence before me is that the landlord was aware and had sufficient notice of the tenants' forwarding address by the end of the tenancy on August 31, 2016. Therefore, based on all of the evidence in this matter, I find that the landlords had 15 days after August 31, 2016 to take one of the actions outlined above. I note that the landlord testified that she was unaware of her obligations under the *Residential Tenancy Act* with respect to the tenants' security deposit. I find that the landlords' failure to inform herself with respect to her obligations as a landlord does not negate those obligations.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security (and/or pet damage) 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 tenants both testified that they did not agree to allow the landlords to retain any portion of their security or pet damage deposits. As there is no evidence that the tenants have given the landlord written authorization at the end of this tenancy to retain any portion of their deposits, section 38(4)(a) of the *Act* does not apply to the tenants' security or pet damage deposits.

The tenants seek return of both their security and pet damage deposits. At this hearing, the landlord confirmed that she and her co-landlord did not make any application to the Residential Tenancy Branch to retain the tenants' deposits. Further, I find that the landlords' claims of damage to the rental unit does not have sufficient evidence to support her application for a monetary award for cleaning or damage costs at the end of the tenancy. Pursuant to section 38 of the Act as described above, I find that the tenants are entitled to a monetary order including $625.00 for the return of the full amount of their security and pet damage deposits.

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 before me, including the testimony of both the tenants and one of two landlords, I find that the landlords have neither applied for dispute resolution nor returned the tenants' security or pet damage deposits in full within the required 15 days.

I accept the testimony of both tenants that they have not waived their 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 tenants are therefore entitled to a total monetary order amounting to double the value of their security and pet damage deposits with any interest calculated on the original amount only. No interest is payable for this period.

As well as seeking compensation for damage to the rental unit, the landlords sought to recover $325.00 in unpaid rent for August 2016. The tenants acknowledged that they had only paid $325.00 to the landlord on August 3, 2016 but testified that they paid the remainder of the rent "on or about" August 5, 2016. The tenants indicated that they had been "stupid" to trust the landlords and not require a receipt for the final rental payment. I find that the landlord is entitled to $325.00 in unpaid rent for August 2016. In accordance with section 72 of the Act, that amount can be offset against any award to the tenants and/or the tenants' security deposit. As the tenants were unable to provide sufficient evidence to prove that they had paid $325.00 in rent prior to the end of the tenancy, I find that the tenants' monetary award, as indicated above ($625 + $625.00 for unreturned deposits = $1250.00) should be reduced by $325.00: the unpaid rental amount.

Based on Tenant BS' testimony, she removed LED lightbulbs at the end of the tenancy and failed to replace them with the regular lightbulbs that had been in at the start of the tenancy. The landlord did not provide a receipt for the purchase of light bulb but simply supplied the estimated cost of light bulbs. In the circumstances, I find that the landlords are entitled to a nominal amount of $30.00 towards the replacement of lightbulbs and any other minor repairs as indicated by the landlord during her testimony at this hearing. However, I find that this nominal amount is offset by the amount that the landlord owes the tenant for the cost of grab bars installed in the rental unit ($30.00). As the tenants' evidence with respect to the grab bars is also somewhat indeterminate (as to the amount the tenants in fact paid), I find that the tenants' cost is approximately $30.00. Again, the amount owed to the tenant for grab bars is offset by the costs incurred to the landlords for the lightbulbs and other minor repairs at the end of the tenancy.

Having been successful in this application, I find that the tenants are entitled to recover the $100.00 filing fee paid for this application.

Conclusion

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

Item	**Amount**
Return of Pet Damage & Security Deposits ($312.50 + $312.50= $625.00)	$625.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the *Act*	625.00
Unpaid Rent – August 2016	-325.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	**$1025.00**

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: April 04, 2018

Residential Tenancy Branch