



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of double the security and pet deposit - Section 38;
and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy with Tenant AC and Tenant MW, under written agreement, started on September 1, 2017 on a fixed term to end July 31, 2018 (the “Current Tenancy”). Rent of \$1,555.50 was payable on the first day of each month. Prior to the Current Tenancy, Tenant AC, alone, had a tenancy of the unit under a written agreement for the period September 1, 2015 to August 31, 2017 (the “Prior Tenancy”). At the outset of the Prior Tenancy, the Landlord had collected a security deposit of \$750.00 and a pet deposit of \$750.00 and on September 12, 2015 a move-in inspection was done. These security and pet deposits were carried over to the Current

Tenancy that ended on October 22, 2017. No move-in inspection was conducted at the start of the Current Tenancy. The Parties mutually conducted a move-out inspection on October 22, 2017 with a copy of the inspection report provided to the Tenants. The Tenants provided their forwarding address on the move out report. No deposits were returned to the Tenants and the Landlord made no application to claim against the security deposit.

The Tenants claim return of double the combined security and pet deposit.

The Landlord states that at the move-out inspection of October 22, 2017 Tenant AC signed an authorization for the Landlord to keep all the security and pet deposit. The Landlord states that it was not noticed that the Tenant set out the date September 12, 2015 for this authorization. The Landlord states that they do not recall Tenant AC signing this authorization at the start of the Prior Tenancy. The Landlord states that her husband was present to witness the Tenant signing this authorization on October 22, 2017. The Landlord states that no witness statement has been provided from the husband.

The Tenant states that she signed the authorization on the date stated, September 12, 2015 and that she did this in error. The Tenant states that the move-out inspection of October 22, 2017 sets out that the Tenants did not agree with the move-out report and for that reason the Tenant would not have signed the authorization at the time of the move-out inspection.

The Landlord agrees that the Tenants made it known at move-out that they did not agree with the amount of damages and that an appendix was attached to the report because of this agreement. The Landlord states that she believes that Tenant AC signed the authorization so that the Landlord would not claim any greater amount. The Landlord states that at move-out the Tenant was distressed and stormed out but signed the authorization before she left. The Landlord states that an application for dispute

resolution was not made as the Landlords relied on the Tenant's signed surrender of the deposits. The Landlord states that at the move-out inspection the Landlord had indicated an estimated \$1,500.00 as damages and also that the costs could be in excess. The Landlord states that is why the appendix was filled out. The Landlord states that neither her or her husband noticed the wrong date at the time of the move-out nor when they gave a copy to the Tenants. The Landlord states that the date was not noticed until November 6, 2018.

The Tenant states that she never stormed out on the move-out and that the Landlord left while her husband finished. The Tenant states that the Landlord never made any estimate of the amount of costs at the move-out only saying that they would have to investigate the costs and that they would get back to the Tenants. The Tenant emphatically states that it was signed at the outset of the Prior Tenancy and not at the end of the Current Tenancy and that it makes no sense to authorize the retention of the deposits when they disputed the damages. Tenant MW states that no authorization to retain was signed and there was no agreement on the damages.

The Landlord states that between the inspection and the end of the 15 day period there was no mention from the Tenants about having their deposits returned. The Tenant states that as soon as the 15 days were up and as they did not receive any communication from the Landlord the Tenants sent an email seeking the return of the deposits.

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Section 23(1) of the Act provides that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Given the undisputed evidence of a written tenancy agreement

between the Landlord and the Tenants with a start date of September 1, 2017 I find that this is the date the Parties rights and obligations took effect and that the obligation to conduct a move-in inspection arose at this point.

Section 24(2) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not offer 2 opportunities for inspection,
- (b) having made the offers, does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the undisputed evidence that no move-in inspection was done at the start of the September 1, 2017 tenancy, I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at this point.

Section 38(5) of the Act provides that the right to retain a security deposit based on the tenant's written agreement does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished. Even if the Tenant did sign an agreement for the Landlord to retain the security and pet deposit on October 22, 2017, and I consider this to be unlikely given the undisputed evidence that the Tenants did not agree to the damages on that date, as the Landlord's right to claim against the security deposit for damage to the unit was extinguished at the outset of the tenancy, I find that the Landlord had no right to retain the deposits based on the Tenant's agreement.

Section 38 of the Act provides that 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 the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on

the undisputed evidence that the Landlord neither returned the security deposit nor made an application to claim against the security deposit I find that the Landlord must now pay the Tenant double the combined security and pet deposit in the amount of **\$3,000.00** ($\$750.00 + 750.00 \times 2$). As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,100.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,100.00**. If necessary, this order may be filed in the Small Claims 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: August 08, 2018

Residential Tenancy Branch