Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 19, 2018 (the "Application"). The Tenants applied for the return of the security and pet deposit and reimbursement for the filing fee.

The Tenants appeared at the hearing with the Advocate. The Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenants confirmed at the outset that they were requesting double the security and pet deposit back if I found the Landlords breached the *Residential Tenancy Act* (the "*Act*") or *Residential Tenancy Regulation* (the "*Regulations*").

The Landlord confirmed the correct address of the rental unit and I amended the Application to reflect this. The Landlord also confirmed the second landlord should be named on the Application and I amended the Application to reflect this. These amendments are reflected on the front page of this decision.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed she received the hearing package and Tenants' evidence. The Tenants confirmed they received the Landlord's evidence. Neither party raised any issues in relation to service.

I had not received a copy of the Landlord's evidence. I allowed the Landlord to upload the evidence after the hearing given the Tenants had received it. The Landlord did upload the evidence and I have reviewed it.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to the return of double the security and pet deposit?

2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement had been submitted as evidence. It is between the Landlords and Tenants in relation to the rental unit. The tenancy started August 15, 2017 and was for a fixed term ending August 15, 2018. Rent was $1,100.00 per month due by the first of the month. The Tenants paid a security deposit of $550.00. The agreement is signed by the Landlord and one of the Tenants; however, both parties agreed it was understood that both Tenants were tenants under the agreement.

The parties agreed the $550.00 paid by the Tenants was for a security deposit and pet deposit and that each deposit was therefore $275.00.

The parties agreed the Tenants vacated the rental unit May 31, 2018.

The Landlord advised that she returned $216.60 of the deposits June 8, 2018. The Landlord testified that she split the $216.60 between the two Tenants. Tenant J.F. confirmed he received the cheque June 13, 2018. Tenant K.Y. testified that she received the cheque September 13, 2018 but did not dispute that the Landlord sent it June 8, 2018.

I asked the Landlord whether the $216.60 was part of the security or pet deposit and she advised it was part of both.

The parties agreed the Landlord received Tenant J.F.'s forwarding address in writing on May 30, 2018. I understood the parties to say Tenant K.Y. provided her forwarding address in a letter May 27, 2018.

The parties agreed the Landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy. The parties agreed the Landlords did not apply to keep any of the deposits.

The Landlord took the position that the Tenants agreed in writing at the end of the tenancy that the Landlords could keep some or all of the deposits. She pointed to term 15 in the tenancy agreement which states that the Landlords can deduct from the security deposit for a number of things related to repairs and cleaning. The Landlord also referred to page three of the condition inspection report which includes an outline of repairs required. The Landlord said this is also an agreement by the Tenants that some of the deposits could be kept.

The Tenants took the position that they did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the deposits.

Both parties agreed on the following. The Landlords and Tenants did a move-in inspection August 14, 2017. A condition inspection report was completed. Neither party signed the report. The Landlords did not provide a copy of the report to the Tenants.

Both parties agreed the Landlords and Tenants did a move-out inspection May 30, 2018.

I have reviewed the Landlord's evidence package and note the following. The Landlord raises service issues that were not raised at the hearing. At the hearing she confirmed she received the hearing package and evidence. I do not find the outline of events leading up to this relevant to the issues before me.

The Landlord outlines harassment allegations, these are irrelevant to the issues before me.

In her written material, the Landlord states that she told the Tenants in a letter letting the Tenants break the lease that they would not be getting their deposits back.

The Landlord also states she "would like to put in a counter suit" and outlines the amounts claimed.

The remainder of the Landlord's evidence is not relevant as explained below.

Analysis

Under sections 24 and 36 of the *Act*, parties can extinguish their rights to security and pet deposits if they fail to follow the *Act* or *Regulations*.

There was no issue that the Tenants participated in a move-in and move-out inspection and therefore I find they did not extinguish their rights in relation to the security or pet deposit under sections 24 or 36 of the *Act*.

Section 24(2) of the *Act* states:

> (2) 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
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> …
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> (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. (emphasis added)

The parties agreed the Landlords did not provide a copy of the move-in condition inspection report to the Tenants at the start of the tenancy. The Landlords therefore extinguished their right to claim against the deposits for damage to the unit.

Section 38 of the *Act* sets out the obligations of landlords in relation to security and pet deposits held at the end of a tenancy. Section 38(1) requires landlords to return the deposits or claim against them within 15 days of the later of the end of the tenancy or the date the landlords receive the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*. Further, landlords cannot claim against the deposits for damage to the unit under section 38(1) if they have extinguished their right to claim against the deposits under either section 24 or 36 of the *Act*.

Here, there is no issue that the Tenants provided their forwarding addresses in writing to the Landlords prior to the end of the tenancy. Therefore, May 31, 2018, the end of the tenancy, is the relevant date for the purposes of section 38(1) of the *Act*. The Landlords had 15 days from May 31, 2018 to repay the deposits or claim against the security deposit for something other than damage to the unit.

I accept that the Landlords returned $216.60 of the deposits on June 8, 2018 and therefore within the 15-day deadline. The Tenants did not dispute this. However, there is no issue that the Landlords did not repay $333.40 of the deposits and did not apply for dispute resolution to claim against this amount. Therefore, the Landlords failed to comply with section 38(1) of the *Act*.

In relation to the exceptions outlined in sections 38(2) to 38(4) of the *Act*, the only issue that arose was whether the Tenants agreed in writing at the end of the tenancy that the Landlords could keep some or all of the deposits. The Landlord pointed to term 15 in the tenancy agreement and page three of the move-out condition inspection report in this regard.

Term 15 in the tenancy agreement purports to authorize the Landlords to deduct from the deposits for a number of reasons as listed in the agreement. The *Act* specifically sets out what landlords are required to do in relation to deposits in section 38 of the *Act*. Pursuant to section 5 of the *Act*, parties are not permitted to contract outside of the *Act* and any attempt to do so is of no effect. I find term 15 is an attempt to contract outside of the *Act* as the *Act* does not allow landlords to deduct from deposits without filing an application for dispute resolution unless the exceptions in section 38 of the *Act* apply. I find term 15 unenforceable.

Further, the exception in section 38(4) of the *Act* states:

> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
>
> > (a) 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 tenancy agreement is signed at the start of the tenancy and therefore the Tenants signing it with term 15 included is not sufficient to trigger the exception in section 38(4)(a) of the *Act*.

The Landlord took the position that the Tenants agreed to some or all of the deposits being kept because they signed the move-out condition inspection report and it listed damage and necessary repairs. The Tenants disputed that they agreed to deductions. I do not accept that the Tenants did agree to deductions. For section 38(4)(a) of the *Act* to apply, the Tenants had to have agreed to the Landlords keeping a specific amount of

the security or pet deposit and the agreement must be explicit. There is nothing in the evidence that shows the Tenants did this.

Given some of the comments made by the Landlord during the hearing and in the written materials, I also note that it is not sufficient that the Landlords told the Tenants they were going to keep some of the deposits. The Landlords must comply with section 38 of the *Act*.

In the circumstances, I do not accept that section 38(4)(a) of the *Act* applies. Further, none of the other exceptions apply.

I find the Landlords failed to comply with section 38(1) of the *Act* by keeping $333.40 of the deposits without applying for dispute resolution claiming against the deposits within 15 days of the end of the tenancy on May 31, 2018.

I note that the Landlord sought to file a "counter-claim" in her written material. The written material was of course not filed within 15 days of the end of the tenancy as the Application was not filed at that time. Further, the Landlords must file their own application for dispute resolution to claim for compensation or to keep the security or pet deposit. Parties are not permitted to "file counter-claims" by indicting in their evidence or written materials that they are doing so.

Given the Landlords failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the Landlords are not permitted to claim against the deposits and must return double the deposits to the Tenants pursuant to section 38(6) of the *Act*.

I note that the condition of the rental unit is not relevant in the circumstances. If the Landlords wanted to keep the deposits for damage to the unit, uncleanliness or on some other basis, they were required to file an application for dispute resolution claiming against the deposits. The Landlords were not entitled to simply deduct from the deposits. Further, the Landlords had extinguished their right to claim against the deposits for damage to the rental unit.

I find the Tenants are entitled to the return of double the deposits being $1,100.00. Given the Landlords returned $216.60 of the deposits, the Tenants are entitled to receive a further $883.40. I note that there is no interest owed on the deposits as the amount of interest owed has been 0% since 2009.

As the Tenants were successful in this application, I grant them reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to a Monetary Order in the amount of $983.40.

Conclusion

The Tenants are entitled to a Monetary Order in the amount of $983.40 and I grant the Tenants a Monetary Order in this amount. This Order must be served on the Landlords as soon as possible. If the Landlords fail to comply with this Order, the 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 *Act*.

Dated: October 17, 2018

Residential Tenancy Branch