Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

On June 19, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") requesting a Monetary Order for the return of the security deposit. The matter was set for a participatory hearing via conference call.

The above parties attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlords testified that they received the evidence package from the Tenants; however, did not successfully send their own evidence package to the Tenants through the mail, as the package was returned. The Landlords also submitted their evidence to the Residential Tenancy Branch under the Tenants' access code. In accordance with Part 3 of the *Rules of Procedure,* I stated that I would not admit the Landlords' evidence during the hearing as the Tenants had not previously received it. However, during the hearing, the Tenants did consent to the admission and discussion of Exhibit #'s 1, 2 and 3 that the Landlords had uploaded to the Residential Tenancy Branch (under the Tenants' name).

Issue to be Decided

Should the Tenants receive a Monetary Order for the return of the security deposit, in accordance with Section 67 of the Act?

Background and Evidence

The Landlords and the Tenants agreed on the following terms of the tenancy:

The month-to-month tenancy began in April of 2015 and the monthly rent of $1,000.00 was due on the first of each month. The Landlords collected a security deposit of $500.00 and through a payment plan with the Tenants, collected a pet damage deposit of $500.00.

The Landlords and the Tenants participated in the move-in condition inspection and, at the end of the tenancy, a move-out condition inspection on May 4, 2018; however, didn't agree on all the terms of the report. The Landlords acknowledged that they received the Tenants' forwarding address prior to them moving out of the rental unit.

The Landlords stated that they received a written letter from the Tenants, dated March 28, 2018 (Exhibit 1 and 2), that advised the Landlords that they would be vacating the rental unit by April 30, 2018. In the letter, the Tenants stated, in part:

> "As we are vacating and entitled to our damage and pet deposit we are asking you if you use either of these to give us a list of what the Damage Deposit or/and Pet Deposit is used for and how much."

The Landlords stated that they took this, in good faith, to mean that if there were costs for cleaning or damages to the rental unit that they had the Tenants permission to deduct that from the deposits if they provided a detailed list and any related invoices or receipts, and to return any balance.

The Landlords submitted a letter, undated, (Exhibit 3) that they had sent to the Tenants that detailed some minor damage to the rental unit (including some damage by the Tenants' pet cat); the subsequent costs for fixing the damage; the replacement of some parts; the cleaning of the carpets; and, the cleaning that the Landlords had completed for a total of $705.02. The Landlords included a cheque, dated May 18, 2018, for the balance of the deposits for a total return to the Tenants of $294.98.

The Landlords stated that they felt they were fair in their attempt to clean and repair the rental unit for the new tenants and to deduct the costs, as requested, from the Tenants' deposits. The Landlords had not included any costs related to

the Tenants overstaying in the rental unit and not providing vacant possession until May 4, 2018.

The Tenants confirmed that they did send the letter, dated March 28, 2018, and in that letter, requested that the Landlords send them a record of any deductions they may take from the deposits. The Tenants felt that they cleaned the rental unit thoroughly and, after receiving the letter from the Landlords, the related invoices and the balance of the deposits, disagreed with the amount of money the Landlords deducted from the security deposit and the pet damage deposit.

The Tenants' Advocate admitted that he had not seen the letter the Tenants had sent to the Landlords but stated that it wasn't meant to give the Landlords full discretion to deduct anything they wanted from the deposits. The letter didn't relinquish the Tenants' deposit to the Landlords.

The Tenants stated in their Application that because the Landlords did not file to retain the security deposit and the pet damage deposit within fifteen days, that they were eligible for double the amount for a total of $2,000.00.

Analysis

Section 38 of the Act states that the Landlords have fifteen days, from the later of the day the tenancy ends or the date the Landlords received the Tenants' forwarding address in writing to return the security deposit to the Tenants, reach written agreement with the Tenants to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the Landlords do not return or file for Dispute Resolution to retain the deposit within fifteen days, and do not have the Tenants' agreement to keep the deposit, or other authority under the Act, the Landlords must pay the Tenants double the amount of the deposit.

I accept the Tenants undisputed testimony and evidence that they requested their security deposit and pet damage deposit from the Landlord and notified the Landlord of their forwarding address in April 2018.

The first question I consider in this case isn't whether the Landlords met the timelines for the return of the deposits or whether they applied for Dispute Resolution. Rather, it is whether the Landlords reached written agreement with the Tenants to keep some or all of the security deposit and the pet damage deposit?

I have evidence before me that the Tenants agreed, in their letter dated March 28, 2018, for the Landlords to use their deposits, with the condition that "…if you use either

of these to give us a list of what the Damage Deposit or/and Pet Deposit is used for and how much.'' I accept the Landlords' undisputed testimony and evidence that they, in good faith and as a result of the tentative approval provided by the Tenants, did subsequently supply a detailed list of the issues they encountered with the rental unit, the associated costs and the related invoices, along with the balance of the Tenants' security deposit, in the amount of $294.98.

Although this hearing did not deal with a monetary claim from the Landlords; from the testimony I heard and the evidence I reviewed, I find that the Landlords claim against the deposits was not unreasonable. I find that the Landlords met the Tenants' conditional approval to deduct cleaning and repair expenses from the deposits by following through with written reasons for the deductions and providing invoices for the costs. As a result, I find that the Landlords were able to deduct expenses from the Tenant's deposits, in accordance with Section 38 of the Act, based on the written agreement (letter dated March 28, 2018) from the Tenants to keep some or all of the security deposit and the pet damage deposit.

As the Landlords' actions were in accordance with Section 38 of the Act, I dismiss the Tenants' claim for the return of their security deposit and pet damage deposit.

Conclusion

Based on the testimony and evidence from all parties, I find that the Landlords received written agreement from the Tenants to deduct expenses from the Tenants' security deposit and pet damage deposit, in accordance with Section 38 of the Act. As a result, I dismiss the Tenants' claim for the return of their deposits without leave to reapply.

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: October 03, 2018

Residential Tenancy Branch