Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TY CON PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>   MNDC, MNSD, FFT

<u>Introduction</u>

On June 14, 2018, The Tenant applied for Dispute Resolution seeking a monetary order for money owed or compensation for damage or loss under the *Act*, and for the return of the security deposit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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.

<u>Issues to be Decided</u>

- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to other compensation under the Act or tenancy agreement?

<u>Background and Evidence</u>

The Parties testified that the tenancy began on June 1, 2014. Rent in the amount of $1,440.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of $700.00.

The Tenant testified that she received a 2 Month Notice To End Tenancy For Landlord's Use Of Property with an effective date of May 30, 2018. The Tenant accepted the 2 Month Notice and moved out of the rental unit on May 2, 2018. The Tenant testified that she never received the equivalent of one month's rent that she was entitled to under the Act.

The Tenant testified that the Landlord did not return the security deposit of $700.00 to her after she vacated the rental unit.

In reply, the Landlord testified that at the move out inspection the Landlord observed that the rental unit was unclean and there was a large amount of damage in the unit. The Landlord testified that the Tenant agreed to sign over the security deposit and entitlement to compensation for the 2 Month Notice for the damages and cleaning that were required.

The Landlord provided a copy of an agreement dated May 2, 2018, that contains the signature of the Tenant. The Landlord testified that he never applied for dispute resolution to keep the security deposit because he had a written agreement that he could keep it.

In reply, the Tenant acknowledged that she signed the agreement. The Tenant testified that she now believes some of the damage may have been for normal wear and tear on the rental unit.

Analysis

Section 38 (4) of the Act provides that a Landlord may retain an amount from a security deposit or a 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.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the parties entered into an agreement on May 2, 2018, that the Landlord could keep the security deposit and additional compensation to pay an obligation of the Tenant. I find that the agreement made by the parties is an enforceable agreement.

I find that by agreeing that the Landlord could keep the amounts listed, the Tenant extinguished any right to make claim for the return of the security deposit and the other compensation.

The Tenant's application for the return of the security deposit and compensation for money owed or damage or loss is dismissed without leave to reapply.

Conclusion

The Tenant's application for a monetary order for the return of the security deposit and money owed was not successful and is dismissed 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: November 15, 2018

Residential Tenancy Branch