# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with a tenant's application for return of double the security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed that both parties exchanged their respective documents and evidence upon each other and I admitted their respective documents and evidence for consideration in making this decision. I explained the hearing process to the parties and permitted them the opportunity to ask questions.

During the hearing, the landlords stated they no longer use the service address provided on the move-out inspection report. The landlords provided their current service address during the hearing which I have recorded on the cover page of this decision.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit and pet damage deposit?

Background and Evidence

The tenancy started on December 1, 2009 and the tenant paid a security deposit of $750.00 and a pet damage deposit of $750.00. The tenant and the landlords' agent completed a move-in inspection report.

The tenancy ended on June 1, 2017 pursuant to a *2 Month Notice to End Tenancy for Landlord's Use of Property*. The tenant and the landlord completed a move-out

inspection report together in the early afternoon of June 1, 2017. The tenant provided her forwarding address on the move-out inspection report. The landlords transferred title and possession of the subject property to the new owner of the property as of 4:00 p.m. on June 1, 2017.

The move-out inspection report indicates the parties were in agreement that some areas of the rental unit required additional cleaning. The landlords did not have the cleaning performed. Rather, they left that up to the new owner to do. On or about June 13, 2017 the new owner provided a copy of a cleaning invoice to the landlords in the amount of $1,176.00. The landlords testified that they paid the new owner the amount of the cleaning invoice and deducted $1,176.00 from the tenant's security deposit and pet damage deposit. The landlords refunded $324.00 to the tenant by way of a cheque dated June 15, 2017. The tenant found the cheque in her mailbox at her forwarding address on June 15, 2017 along with a copy of a cleaning invoice. The tenant cashed the partial refund cheque.

The tenant submitted that she was not agreeable to the amount the landlords deducted from her deposits and had not specifically authorized the landlords to deduct the amount they did. The tenant also submitted that there was no damage caused by her pets yet the landlords made a deduction from her pet damage deposit.

The landlords explained that they did not know how much the cleaning was going to cost at the move-out inspection so the parties agreed that the landlords would deduct the cost from the deposits once it was known. The landlords acknowledged that once the cleaning invoice was received from the new owner they did not contact the tenant in an attempt to get her written consent to deduct that particular amount from the deposits. The landlords were of the position this was not necessary since they already had an agreement with the tenant as recorded on the move-out inspection report.

In addition to providing copies of the tenancy agreement, condition inspection reports, partial refund cheque, and cleaning invoice; both parties provided evidence that included photographs in an attempt to demonstrate the level of cleanliness at the end of the tenancy. As I informed the parties during the hearing, this proceeding is to determine whether the landlords administered the security deposit and pet damage deposit as required under section 38 of the Act. Since the landlords have not made an Application for Dispute Resolution to make a claim for cleaning or any other damages or loss, the level of cleanliness at the end of the tenancy is not relevant to this proceeding. I enquired as to whether the parties were interested in exploring a settlement agreement during the remainder of the hearing to which the tenant indicated she was not.

Accordingly, I informed the parties that the landlords remain at liberty to file their own Application for Dispute Resolution to make a claim for cleaning or another other damages or loss against the tenant.

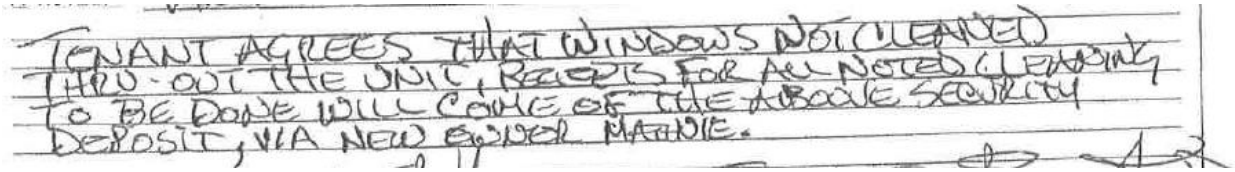
Analysis

Section 38(1) of the Act provides that a landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit and/or pet damage deposit, get the tenant's written consent to retain or make deductions, or make an Application for Dispute Resolution to claim against the deposits. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit and/or pet damage deposit.

In this case, the tenancy ended and the tenant provided her forwarding address in writing to the landlords on June 1, 2017. Accordingly, the landlords had until June 16, 2017 to refund the security deposit and pet damage deposit to the tenant, get the tenant's written consent to make deductions from the deposits, or file an Application for Dispute Resolution to make a claim against the deposits.

The landlords did not file an Application for Dispute Resolution to make any claim against the tenant's deposit. The landlords refunded a portion of the tenant's deposits to the tenant in the amount of $324.00 within the 15 day time limit and deducted $1,176.00 from the tenant's deposits. Accordingly, the issue to determine is whether the landlords had the tenant's written consent to make such a deduction.

The landlords rely upon the following notation on the move-out inspection report, which has a signature of both parties under the notation, as being the tenant's written consent to deduct $1,176.00 from the tenant's deposits.


TENANT AGREES THAT WINDOWS NOT CLEANED THRU-OUT THE UNIT, REDUCTS FOR ALL NOTED CLEANING TO BE DONE WILL COME OFF THE ABOVE SECURITY DEPOSIT, VIA NEW ENDER MAHDIE.

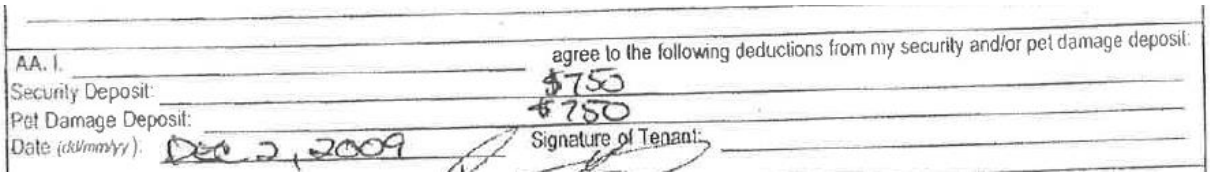
Where landlord seeks to obtain a tenant's written consent to make a deduction from the tenant's deposit, section 38(4) provides:

> (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

[My emphasis underlined]

In interpreting statutes, meaning must be giving to the words used. Section38(4)(a) specifies that a landlord may retain "the amount" the tenant agrees to in writing. I interpret "the amount" to mean a specific amount. I am of the view that the notation on the move-out inspection report, reproduced above, is too vague to be considered authorization to deduct a specific amount form the deposits. As I stated during the hearing, if the notation were to be found enforceable it would be akin to writing a blank cheque and I find to require that is unconscionable.

In the "End of Tenancy" section of the condition inspection report is a space (denoted as sub-section AA) for tenants to authorize the amounts to be deducted from the security deposit and/or pet damage deposit. In this case, the sub-section AA reflects the following:


AA. I, _____ agree to the following deductions from my security and/or pet damage deposit:
Security Deposit: $750
Pet Damage Deposit: $750
Date (dd/mm/yy): Dec 2, 2009 Signature of Tenant: _____

It is apparent that sub-section AA was partially completed at the start of the tenancy in error since section 20(e) of the Act prohibits any requirement that the landlord automatically keeps all or part of the deposit at the end of the tenancy. Sub-section AA was not completed or signed by the tenant at the end of the tenancy. Accordingly, I find there was no authorization for specific amounts to be deducted from the tenant's deposits.

I appreciate the circumstances in this case are somewhat unique in that the property was about to be transferred to a new owner only hours after the tenancy ended; however, the landlords still had remedy to seek the lawful right to make a specific

deduction from the tenant's deposits in compliance with section 38(1) which were to either: get her written consent to deduct $1,176.00 on or before June 16, 2017 or make an Application for Dispute Resolution on or before June 16, 2017 if she would not provide such authorization. The landlords did not do either of these things, or refund the full amount of the deposits to the tenant; therefore I find the landlords violated section 38(1) of the Act and must now pay the tenant double the deposits, less the partial refund already received by the tenant.

In keeping with Residential Tenancy Branch Policy Guideline 17: *Security Deposit and Set Off*, I calculate that amount payable to the tenant as follows:

| | |
|---|---|
| Security deposit and pet damage deposit | $1,500.00 |
| Doubling provision – per section 38(6) | x 2 |
| Double security deposit and pet damage deposit | $3,000.00 |
| Less: partial refund received by tenant | (324.00) |
| Payable to tenant | $2,676.00 |

I further award the tenant recovery of the $100.00 filing fee she paid for this application.

In light of the above, I provide the tenant with a Monetary Order in the sum of $2,776.00 to serve and enforce upon the landlords.

As stated previously in this decision, the landlords remain at liberty to make their own Application for Dispute Resolution to seek recovery of cleaning costs or any other damages or losses they may against the tenant under the Act. The statutory time limit for making an Application for Dispute Resolution is within two (2) years of the tenancy ending.

Conclusion

The tenant has been provided a Monetary Order in the amount of $2,776.00 to serve and enforce upon the landlords.

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 09, 2018

Residential Tenancy Branch