



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KIDD HOLDINGS
and [tenant name suppressed to protect privacy]

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 Tenant on February 08, 2019 (the “Application”). The Tenant applied for return of the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing with Advocates J.L. and J.M. B.K. and M.K. appeared at the hearing for the Landlords. I explained the hearing process to the parties who did not have questions when asked. The Tenant, B.K. and M.K. provided affirmed testimony.

B.K. confirmed the correct spelling of the company Landlord’s name and this is reflected in the style of cause. M.K. provided his full legal name and this is reflected in the style of cause.

The Tenant confirmed she is seeking return of double the security deposit if I find the Landlords failed to comply with the *Residential Tenancy Act* (the “Act”).

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in this regard.

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

I note that J.L. advised at the outset that he would not be giving evidence on behalf of the Tenant. However, during the hearing, J.L. provided testimony about the Tenant

signing a portion of the move-out Condition Inspection Report. This was new evidence not previously provided by the Tenant during the hearing. Nor was the evidence provided by J.L. in the written materials of the Tenant submitted with the Application.

I told J.L. it was my view he was providing evidence and so I would affirm him. J.L. indicated he would not be affirmed. I told J.L. I would prefer to hear directly from the Tenant if she was able to provide her own testimony on this point. The Tenant was able to provide her own testimony on this point and did so. Both J.L. and the Tenant were subsequently given ample opportunity to make whatever submissions they wished to make on the issues raised.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started July 01, 2018 and was a month-to-month tenancy. The tenants paid a \$447.50 security deposit. B.K. testified that the Landlords still hold the entire security deposit.

The Tenant testified that the tenancy ended October 28, 2018. B.K. testified that it ended October 31, 2018.

After much conflicting testimony in relation to the Tenant providing the Landlords with her forwarding address in writing, both parties agreed the Tenant did this October 31, 2018 on the move-out Condition Inspection Report.

The parties agreed the Landlords did not have an outstanding monetary order against the Tenant at the end of the tenancy. B.K. advised that the Landlords did not apply to keep the security deposit because the Tenant had agreed to the Landlords keeping it.

B.K. and M.K. testified that M.K. and the Tenant did a move-in inspection July 02, 2018.

The Tenant testified that no move-in inspection was done and she was not offered two opportunities to do a move-in inspection.

A move-in Condition Inspection Report was submitted as evidence. There is no indication anywhere on the move-in Condition Inspection Report that the Tenant was present for the inspection.

M.K. could not explain why the Tenant had not signed the move-in Condition Inspection Report. The Landlords could not point to any other evidence showing the Tenant participated in the move-in inspection.

Both parties agreed on the following. A move-out inspection was done October 31, 2018. A move-out Condition Inspection Report was completed and signed by both parties. A copy of the move-out Condition Inspection Report was provided to the Tenant in person the same day as the inspection.

The parties disagreed on whether the Tenant agreed in writing at the end of the tenancy that the Landlords could keep some or all the security deposit.

A copy of the move-out Condition Inspection Report was submitted by the Landlords. On page three of four there are two numbered sections under "End of Tenancy". Section 1 allows the Tenant to agree or disagree with the Condition Inspection Report. Section 2 states as follows:

I [Tenant's signature] agree to the following deductions from my security and/or pet damage deposit:

Security Deposit: 447.50

Pet Damage Deposit: [blank]

Date (dd/mm/yy): 31-10-2018

Signature of Tenant: [Tenant's signature]

The Tenant again signed the Condition Inspection Report on move-out under Section 4 for "Tenant's Signature".

B.K. testified as follows. The move-out Condition Inspection Report was completed for the full amount of the security deposit. The Tenant signed the relevant section of the move-out Condition Inspection Report authorizing the deduction. The Tenant checked the wrong box in relation to whether she agreed with the Condition Inspection Report or not. The Tenant was asked to come back and initial the correct box and she did.

The Tenant testified as follows. She checked the box stating she did not agree with the move-out Condition Inspection Report during the inspection. She received texts saying

she had to check the other box stating she agreed with the Condition Inspection Report to get her deposit back. She went back and changed the checked box on November 01, 2018; however, she did not agree with the Condition Inspection Report.

I asked the Tenant a question about her signature on Section 2 of the move-out Condition Inspection Report. She again referred to checking the box located in Section 1. I asked the Tenant how this relates to Section 2 of the Condition Inspection Report. J.L. then provided evidence about this issue. After the discussion noted in the Introduction, I asked the Tenant when she signed Section 2 of the Condition Inspection Report. The Tenant testified that she signed Section 2 when she returned to change the checked box on November 01, 2018.

In reply on the issue of when the Tenant signed Section 2 of the move-out Condition Inspection Report, B.K. pointed to texts submitted by the Tenant which both parties agreed were between the Tenant and M.K. The texts from M.K. state as follows:

Oct 31...

Also I need you to check the correct box as well on that form

Nov 1...

Hey we need you to come check the correct box for the end condition report

You signed for the deduction of damage deposit but in order to give it back we have to have the correct box checked...

B.K. also pointed out that the signature date is October 31, 2018 and submitted that the Tenant would have put the correct date if she signed Section 2 later as claimed.

M.K. testified that the Tenant signed Section 2 on October 31, 2018.

The Tenant submitted no evidence in support of her position that she signed Section 2 of the move-out Condition Inspection Report on November 01, 2018 and not October 31, 2018.

B.K. asked the Tenant if she had submitted her copy of the move-out Condition Inspection Report which would have shown whether she signed Section 2 on October 31, 2018. J.L. advised that the Tenant had not submitted this.

The Landlords submitted a Security Deposit Report showing their deductions. The basis for the deductions were cleaning, damage to a bedroom door that requires repair and carpet cleaning.

Analysis

Section 38 of the *Act* sets out the obligations of landlords in relation to security deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Further, parties can extinguish their rights in relation to the security deposit under sections 24 and 36 of the *Act* if they fail to comply with the *Act*.

Section 24 of the *Act* states:

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(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

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), 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.

The parties gave differing testimony in relation to the move-in inspection. However, I find the Tenant did not extinguish her rights in relation to the security deposit under section 24(1) of the *Act* regardless of which version of events I accept. Given this, the exception to section 38(1) of the *Act* set out in section 38(2) of the *Act* does not apply.

Given the testimony of the parties, there is no issue that the exception to section 38(1) set out in section 38(3) of the *Act* does not apply.

Section 38(4) and (5) of the *Act* state:

(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...

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) 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 under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

I find that the Tenant did agree in writing at the end of the tenancy that the Landlords could keep the entire security deposit. I find this based on the move-out Condition Inspection Report with the Tenant's signature in Section 2. This Section clearly sets out that the Tenant is agreeing to the Landlords keeping the deposit.

I do not accept the Tenant's testimony that she signed Section 2 of the move-out Condition Inspection Report on November 01, 2018 and not October 31, 2018. The Tenant has submitted no evidence to support this. This is the Tenant's claim and her onus to prove. The Tenant testified that she received a copy of the move-out Condition Inspection Report in person on October 31, 2018. If this is the case, the Tenant could easily have provided evidence that she did not sign Section 2 on October 31, 2018 as she should have an unsigned copy of the move-out Condition Inspection Report in her

possession. Further, the document itself supports that it was signed October 31, 2018 and not November 01, 2018 as the date beside the Tenant's signature is October 31, 2018.

I do not find the evidence in relation to Section 1 of the move-out Condition Inspection Report relevant as I find Section 2 is a stand-alone section in which the Tenant authorized the Landlords to keep the security deposit.

However, I find that section 38(5) of the *Act* does apply here. Based on the Security Deposit Report submitted by the Landlords, I find that the liability referred to on the move-out Condition Inspection Report is in relation to damage to the rental unit and not some other liability such as unpaid rent.

Further, I find that the Landlords did extinguish their right to claim against the security deposit for damage to the rental unit under section 24 of the *Act*.

I do not accept that the Landlords did a move-in inspection with the Tenant or that the Landlords provided the Tenant with two opportunities to do a move-in inspection as required. The Tenant testified that no move-in inspection was done. The Landlords testified that both parties did the move-in inspection. Yet the Condition Inspection Report completed is not signed by the Tenant and there is no indication on it that the Tenant was present for a move-in inspection. I would expect the Landlords to have had the Tenant sign the move-in Condition Inspection Report if a move-in inspection was in fact done. The Landlords could not point to any evidence in support of their position that the move-in inspection was done. I acknowledge that this is the Tenant's application and her onus to prove the claim. However, I find the Tenant has done so based on the unsigned move-in Condition Inspection Report which supports her testimony.

I therefore do not accept the Landlords' testimony on this point and do accept that no move-in inspection was done with both parties present. I also accept that the Tenant was not provided two opportunities to do a move-in inspection as this was undisputed between the parties.

Therefore, the right of the Landlords to keep the security deposit without filing an application with the Residential Tenancy Branch pursuant to section 38(4)(a) of the *Act* does not apply.

Given that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply, the Landlords were required to comply with section 38(1) of the *Act*.

The parties agreed the Landlords received the Tenant's forwarding address on October 31, 2018 on the move-out Condition Inspection Report. I find this to be the relevant date for the purposes of section 38(1) of the *Act*. The Landlords had 15 days from October 31, 2018 to repay the security deposit or claim against it for something other than damage to the rental unit. This is so because the Landlords had extinguished their right to claim against the security deposit for damage to the rental unit.

The Landlords did not repay the security deposit or claim against it. Therefore, the Landlords failed to comply with section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlords cannot claim against the security deposit and must pay the Tenant double the amount of the security deposit. The Landlords must pay the Tenant \$895.00. I note that there is no interest owed on the security deposit as the amount of interest has been 0% since 2009.

Given the Tenant was successful, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlords must pay the Tenant \$995.00. I issue the Tenant a Monetary Order in this amount.

Conclusion

The Landlords must pay the Tenant \$995.00 as double the security deposit and reimbursement for the filing fee. I issue the Tenant 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: May 28, 2019

Residential Tenancy Branch