



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$900 for the security deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. I have carefully considered the oral testimony and the written statements provided by both parties.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on May 23, 2019.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on December 13, 2018. The rent was \$1800 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$900 at the start of the tenancy.

The landlord testified she and tenant conducted a Pre Tenancy Inspection and she provided a copy of that document to the Tenant at the time the Tenant took possession.

The tenancy ended on April 26, 2019 after the parties entered into an agreement to end the tenancy. The landlord testified she felt pressured to enter into this agreement.

The tenant gave the following evidence by way of oral testimony and/or written statement:

- He cancelled the contract and moved out on April 26, 2019 because of the landlord's tyranny and unlawful demands.
- They conducted an inspection on April 26, 2019. The landlord was acting unreasonably during the inspection with and I left.
- When I got home I texted the landlord asking for my keys back and stated that I would return the next day and complete the cleaning. The landlord texted me that she didn't need the key anymore and that she had replaced the locks. She further stated that if I returned she would report it to the police. I did not make any further visits because I did not want the problem to escalate.
- The landlord is deliberately harassing and driving out tenants with the aim of raising rental fees.
- On May 8 2019 I received a text from the landlord saying that the landlord would pay \$593.68 except for the cost of replacing a lock and \$125.72 utility. She further stated she would claim damages if he reported it to the RTB.
- The pictures the landlord sent was for damage that existed prior to him taking possession.
- He asked for the return of \$900 being the entire deposit.
- On May 10, 2019 the landlord sent a text message saying she would not pay the entire deposit because of an issue with the inspection.
- He orally testified at the hearing that he did not provide the landlord with his forwarding address prior the service of the Application for Dispute Resolution.

The landlord gave the following evidence by was of oral testimony and/or written statement:

- The tenant unlawfully ended the tenancy and showed aggressive behavior to the landlord. The landlord made an effort to send the deposit to the tenant but did not have a forwarding address. She e-mailed him. While waiting for the tenant to give his banking information she attended a seminar for home owners and tenants put on by TRAC and found out that since the tenant left during the inspection there was no need to pay the deposit.
- She attended to conduct an inspection on April 26, 2019. She went upstairs and discovered there were still form mats all over the floor. She told the tenant that before she could do an inspection the mats would have to be removed. The tenant got angry and stormed out of the house. This was 2-3 minutes after the start of the inspection.
- She texted the tenant after he left asking for the return of the keys. He told her he would keep his access and enter the house again in another day to disassemble the mats.
- The tenant made threats against her that he would publicly embarrass her in the Korean community.

- On April 27, 2017 she texted him advising she had changed the locks.
- The tenant had previously acted in a forceful manner to her.
- She signed a contract with the tenant agreeing to pay moving expenses and ending the fixed term tenancy because she was afraid for her safety and she wanted the situation to be ended. The agreement further provided the tenant would pay the utilities.
- The landlord orally testified at the hearing that she did not arrange with the tenant for a second inspection.
- She attended a seminar session a few days later where a speaker told her that there was no obligation to pay the deposit to the tenant as the tenant did not complete the inspection.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless

- the tenant's right to the return of the security deposit has been extinguished by the Act,
- the parties have agreed in writing that the landlord can retain the security deposit,
- the landlord already has a monetary order against the tenants or
- the landlord files an Application for Dispute Resolution within that 15 day period making a claim against the deposit. .

It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

Neither party was prepared to attempt to negotiate a settlement. Both relied on strict legal rights which they felt were provided to them in the Residential Tenancy Act.. Unfortunately, both failed to follow the requirements of the Act.

I do not accept the submission of the landlord that the tenant's rights to the return of the security deposit has been extinguished. Section 36 of the Act provides:

Consequences for tenant and landlord if report requirements not met

36 (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 complied with section 35 (2) [2 opportunities for inspection], and
- (b) the tenant has not **participated (my emphasis)** on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the 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 35 (2) **[2 opportunities for inspection],**

(b) having complied with section 35 (2), does not participate on either occasion,
or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I do not accept the submission of the landlord that the word “participate” in section 36(1)(b) requires that the tenant be there for the entire inspection. The interaction between the parties at the inspection deteriorated to such an extent that the tenant felt it would get out of hand if he did not leave. I determined that to interpret the word “participate” as requiring the tenant to stay for the entire inspection to avoid the extinguishment of his right to the return of the security deposit would have the potential of leading to considerable mischief as it would allow landlords to provoke tenants to leave. Further, the Act requires that the landlord provide the tenant with 2 opportunities for inspection. The landlord did not arrange for a second opportunity. This is significant as the tenant texted the landlord stating this he would return to complete the work requested by the landlord but the landlord refused the request. I determined the tenant’s right to the security deposit has not been extinguished by his failure to stay for the entire inspection.

The tenant also failed to follow the requirements of the Act. The Act requires that the Tenant give the landlord his forwarding address in writing and then wait 15 days from when the landlord received that forwarding address before filing an Application for Dispute Resolution. The tenant failed to give the landlord his forwarding address in writing. The action of the tenant in failing to provide the landlord with his forwarding address in writing prevented the landlord from filing a claim against the tenant as the Act allows her to do. The fact that the forwarding address was part of the Application for Dispute Resolution does not relieve the tenant from his obligation to provide the forwarding address in writing and waiting 15 days before filing an Application for Dispute Resolution.

Monetary Order and Cost of Filing fee

As a result I ordered that the Tenant’s application for a monetary order to recover the security deposit and the cost of the filing fee be dismissed with leave to re-apply.

Should the tenant re-apply the tenant must first give the landlord his forwarding address in writing and then wait 15 days after the landlord receives it before filing an Application for Dispute Resolution. The landlord would then have an opportunity to file an Application for

Dispute Resolution seeking a monetary claim and to retain the security deposit. If the parties are unable to reach a settlement and if the landlord fails to file the an Application for Dispute Resolution within the 15 days the tenant would then be in a position to make a claim for double the security deposit and this matter would be decided on the merits in accordance with the Residential Tenancy Act.

This decision is final and binding on both parties.

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: August 20, 2019

Residential Tenancy Branch