Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT
MNDL-S, FFT

Introduction

This teleconference hearing was scheduled in response to applications from both parties under the *Residential Tenancy Act* (the "*Act*"). The Tenants applied for the return of the security deposit. The Landlord applied for compensation for damages and to retain the security deposit towards compensation owed. Both parties also applied for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Tenants were present for the hearing along with an agent who was interpreting for one of the Tenants (the "Tenants"). The Landlord was also present. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Tenants' application and a copy of the Tenants' evidence. The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Landlord's application and a copy of the Landlord's evidence. Neither party brought up any issues regarding service during the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Are the Tenants entitled to the return of the security deposit?

Is the Landlord entitled to monetary compensation for damages?

Should the Landlord be authorized to retain the security deposit towards compensation owed?

Should either party be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement which was submitted into evidence. The tenancy started on October 8, 2017. Monthly rent was set at $1,800.00 and the Tenants paid a security deposit of $1,800.00 at the start of the tenancy. The tenancy ended on May 7, 2019.

The parties also agreed that on May 13, 2019 the Landlord returned $943.00 which he stated was $900.00 of the security deposit as well as $43.00 interest. He stated that the Tenants requested this due to charging a full month's rent for the security deposit instead of the allowable half a month total. The Tenants stated that they were unaware that there was currently no interest on security deposits and would return the $43.00 of interest they requested.

The Tenants have applied for compensation in the amount of $1,800.00 which they noted on their application was double the security deposit amount that has not yet been returned. The Tenants stated that although they met with the Landlord to do a move-out inspection, it was verbal only and there was nothing put into writing or signed by either party. They also stated that there was no move-in inspection completed in writing.

The Tenants testified that their forwarding address was provided on May 10, 2019 through a messenger phone app. They provided a copy of the messenger conversation which they also translated into English. In the English translation from the message on May 10, 2019 the Tenants requested the amount of $900.00 that they stated was overcharged along with interest of $43.00, as well as the remainder of the security deposit. The Tenants provided an address of where to send the money.

The Landlord stated that he did not receive the Tenants' forwarding address until receipt of the notice of hearing documents and also stated that the addresses were different. The addresses were reviewed, and the Tenants confirmed their current address as stated on their Application for Dispute Resolution.

The Landlord stated that the message on May 10, 2019 was sent to his spouse and that he did not receive it. The Tenants stated that their main communication was with the Landlord's spouse and that the Landlord was in the group chat on the messenger app.

The Tenants stated that the Landlord must have received the message on May 10, 2019 with their address as he returned an amount of $943.00 as they requested in that message.

The Landlord has applied for compensation in the amount of $3,184.00 which he stated is $3,584.00 of repairs to the rental unit as well as $500.00 for repair of damaged furniture and light fixtures. The Landlord has also deducted the $900.00 that he is still in possession of from the security deposit for total compensation claimed in the amount of $3,184.00.

The Landlord submitted photos into evidence which he stated show the condition of the rental unit at the start and end of the tenancy. He stated that a walk-through of the unit was conducted at the start and end of the tenancy when the photos were taken but agreed that the move-in and move-out inspections were not put into writing and not signed by both parties.

The Landlord also submitted two quotations for repairs into evidence. The first, dated July 29, 2019 is for an amount of $3,584.00 for repair of a door lock, floor cleaning, toilet clog repair, and wall repair and paint. The second, also dated June 29, 2019 is for an amount of $1,904.00 and outlines the work involved with the repair and painting of the walls in the rental unit.

The Tenants questioned the two quotes provided, and the Landlord responded that one quote was for all of the work needed in the rental unit while the other was a detailed quote regarding the repair and painting of the rental unit walls.

The Landlord stated that he discussed the repairs needed with the Tenants when they were moving out and that the Tenants had agreed verbally to pay half of the cost of the wall repairs. However, the Landlord stated that the Tenants did not follow through on this as they filed an Application for Dispute Resolution for the return of the remainder of their deposit.

The Tenants stated that they had a conversation with the Landlord about paying half of the cost of the wall repairs but were of the understanding that the total cost to them would be between $100.00 and $200.00. However, they stated that they never agreed

to a specific amount in writing and also noted that they had provided requirements to the Landlord before they would agree to an amount for the wall repairs. In the message dated May 10, 2019 in which the Tenants provided a translation they asked to be informed of the cost of repairs before they start and stated that they must also receive the $943.00 back before the repairs begin. The Tenants did not agree that they owe any money to the Landlord for repairs.

The Landlord stated that the amount claimed is the amount to bring the rental unit back into the condition it was at the start of the tenancy. He stated that the damage that occurred to the rental unit and the furniture provided in the rental unit was beyond reasonable wear and tear and therefore the Tenants should be responsible for the cost of repairs.

The Landlord stated that although a quote was provided for the work needed, he completed the work for the same amount as the quoted amount and therefore is still claiming an amount of $3,184.00.

Analysis

Regarding the security deposit, I refer to Section 38(1) of the *Act* which states the following:

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The parties were in agreement that the tenancy ended on May 7, 2019. However, although the Tenants stated that their forwarding address was provided to the Landlord on May 10, 2019, the Landlord denied receipt of their forwarding address until he

received the notice of hearing documents regarding the Tenants' Application for Dispute Resolution.

As the method of service of the Tenants' forwarding address is not an approved method of service under the *Act,* I find that I cannot confirm that the Landlord received the Tenants' forwarding address on May 10, 2019, particularly when the messages were not directly to the Landlord and he has denied receipt. Although the Landlord returned an amount of $943.00 as requested by the Tenants in the same message, this does not confirm to me that the forwarding address was received as the return of the money could have also been discussed in further conversations.

Instead, as the Tenants' current address was confirmed with the Landlord at the hearing as their address as stated on the Application for Dispute Resolution, I find that the Landlord has the Tenants' forwarding address as of the date of the hearing; September 23, 2019.

Therefore, I decline to award the Tenants the return of the remainder of the amount paid for the security deposit and instead order that the Landlord has 15 days from the date of the hearing to comply with Section 38 of the *Act.*

I also note that although the Tenants paid more than half a month's rent as security deposit which does not comply with Section 19 of the *Act,* the parties both agreed that $1,800.00 was paid as a deposit. Therefore, I find that $1,800.00 is the amount of the security deposit in dispute. As the Landlord has returned an amount of $943.00 and as there is not currently any interest payable on security deposits, I find that the Landlord did not need to pay any interest. Instead, I find that the Landlord has returned an amount of $943.00, leaving a security deposit amount of $857.00 in the Landlord's possession.

Regarding the Landlord's application, I refer to *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* which outlines a four-part test for determining if compensation is due as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

As stated in Section 37 of the *Act,* a tenant is required to leave a rental unit clean and reasonably undamaged at the end of a tenancy. However, as agreed upon by both parties, a move-in and move-out Condition Inspection Report was not completed in writing and signed by both parties in accordance with Sections 23 and 35 of the *Act.*

As such, I find that the Landlord has not established the condition of the rental unit at the start and end of the tenancy which would support his testimony that the damage occurred during the tenancy. Although the Landlord submitted photos of the rental unit, the Tenants questioned when these were taken, and I do not find the photos to be evidence of the condition of the rental unit as agreed upon by both parties, which is the requirement of a move-in and move-out inspection report.

Although a landlord may retain an amount from the security deposit that the tenants agree to in writing pursuant to Section 38(4)(a), I do not find evidence before me that the Tenants agreed in writing to any deductions. While it seems that the parties discussed the Tenants paying for half of the wall repairs, I do not find that a specific amount was agreed to in writing. During the hearing, the Tenants disputed that they are responsible for any of the repair costs in the rental unit.

Accordingly, I do not find that the Landlord, who has the burden of proof in this matter, has established that the damage occurred during the tenancy and therefore that the Tenants breached the *Act.* As such, I find that the Landlord has not met the first requirement of the four-part test or Section 7 of the *Act* to be entitled to compensation. I decline to award any compensation to the Landlord. As the Landlord was not successful with the application, I also decline to award the recovery of the filing fee. The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

As the Tenants were not successful with their application given that they were not able to establish that their forwarding address was provided in accordance with the *Act,* I also decline to award the recovery of the filing fee to the Tenants.

The Tenants' application for the return of the security deposit is dismissed, with leave to reapply. Should the Landlord not return the remainder of the security deposit within 15 days of the hearing date in accordance with Section 38(1) of the *Act,* the Tenants are at liberty to file an application for the return of double the deposit pursuant to Section 38(6) of the *Act.*

Conclusion

The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

The Tenants' Application for Dispute Resolution is dismissed, with leave to reapply.

The Landlord has the Tenants' forwarding address as of September 23, 2019 and the remainder of the security deposit must dealt with within 15 days in accordance with Section 38(1) of the *Act.* Should the Landlord not comply with Section 38(1) of the *Act* within 15 days, the Tenants may file an application seeking the return of double the security deposit.

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: September 24, 2019

Residential Tenancy Branch