



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on February 11, 2020 (the "Application"). The Landlords applied for compensation for damage to the rental unit, to keep the security and pet damage deposits and for reimbursement for the filing fee.

The Landlords and Tenant appeared at the hearing. The Tenant had the Witness appear at the hearing. The Witness was outside the room until required. The Tenant agreed the Witness was not required given the issues before me and I did not hear from the Witness.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant confirmed receipt of the hearing package and Landlords' evidence. The Landlord confirmed receipt of the Tenant's evidence.

The Landlord advised that a second package of evidence had been sent to the Tenant that had not been picked up. The Tenant had not received this. Both parties agreed this was a non-issue given the contents of the package and issues before me.

The Tenant confirmed she is seeking double the deposits back if I find the Landlords failed to comply with the *Residential Tenancy Act* (the "Act").

The Landlord confirmed at the outset that the only basis on which the Landlords are seeking to keep the deposits is that the Tenant extinguished her right to return of the deposits in relation to the move-out inspection.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to keep the security and pet damage deposits?
2. Are the Landlords 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 January 01, 2020 and was for a fixed term ending December 31, 2020. Rent was \$1,250.00 per month due on the first day of each month. The Tenant paid a \$625.00 security deposit and \$275.00 pet damage deposit.

The parties agreed the tenancy ended January 29, 2020.

The parties agreed the Landlords received the Tenant's forwarding address in writing on January 28, 2020. The parties agreed the forwarding address did not have a suite number and that the Tenant provided this by email February 06, 2020.

The Landlord testified that the Landlords did not have an outstanding Monetary Order against the Tenant at the end of the tenancy. The Landlord testified that the Tenant did not agree to the Landlords keeping some or all of the deposits.

The Landlord testified that no formal move-in inspection was done but that the parties did look around the rental unit. The Landlord testified that the Tenant was not offered two opportunities to do a move-in inspection. The Landlord testified that a Condition Inspection Report was not completed. The Tenant agreed with these points.

The Landlord testified as follows in relation to a move-out inspection. The Landlords emailed the Tenant two dates for the inspection at the email address provided on the Tenant's letter ending the tenancy. A Notice of Final Opportunity to Schedule a Condition Inspection was also emailed to the Tenant. The Tenant did not attend the dates provided. The Landlords did a move-out inspection and completed a Condition Inspection Report. The Landlords did not sign the Condition Inspection Report. The Tenant subsequently got back to them saying their emails went into her junk folder. The

Landlords emailed the Tenant a copy of the Condition Inspection Report on February 06, 2020 and sent it again as evidence for the hearing.

The Tenant testified as follows. The Landlords did not email her the move-out Condition Inspection Report. She did not do a move-out inspection with the Landlords. The Landlords' emails went into her spam folder. She found the emails February 03, 2020. The emails did include a Notice of Final Opportunity to Schedule a Condition Inspection. By the time she got back to the Landlords, they were doing or had done the inspection.

The Landlord confirmed that the only issue at the end of the tenancy was damage and that there was no unpaid rent or utilities or similar monies owing.

Analysis

Extinguishment in relation to security and pet damage deposits applies to both parties and applies at both move-in and move-out. It is dealt with in sections 24 and 36 of the *Act* which state:

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.

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 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.

(emphasis added)

Policy Guideline 17 deals with security and pet damage deposits and states in part:

8. In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.

(emphasis added)

In relation to the move-in inspection, the Tenant did not extinguish her rights in relation to the security or pet damage deposits under section 24(1) of the *Act* as the Landlords did not do a formal move-in inspection and did not offer the Tenant two opportunities to do a move-in inspection.

The Landlords did extinguish their right to claim against the security and pet damage deposits under section 24(2) of the *Act* as the Landlords did not offer the Tenant two opportunities to do a move-in inspection, did not do a formal move-in inspection and did not complete a Condition Inspection Report. The Landlords extinguished their right to claim against the security and pet damage deposits at the very beginning of the tenancy.

I do not find it necessary to determine whether the Tenant extinguished her rights in relation to the security and pet damage deposits in relation to the move-out inspection. As stated in Policy Guideline 17, it is the party that extinguishes their rights first that bears the loss. Here, the Landlords extinguished their rights first in relation to the move-in inspection. As stated in Policy Guideline 17, it does not matter whether the Tenant failed to participate in the move-out inspection or not. As stated in Policy Guideline 17, the Landlords were precluded from claiming against the deposits because the Landlords' breach occurred first.

The Landlords are not entitled to keep the security and pet damage deposits on the sole basis that the Tenant extinguished her rights in relation to them given the Landlords extinguished their rights under section 24(2) first. The Landlords must return the security and pet damage deposits to the Tenant.

I am not satisfied the Tenant is entitled to double the deposits back. I find the tenancy ended January 29, 2020 as the parties agreed on this. I find the Landlords received the Tenant's forwarding address in writing January 28, 2020 and an addition February 06, 2020 as the parties agreed on this. Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from February 06, 2020 to repay the deposits or make an application for dispute resolution claiming against them. The Landlords filed the Application February 11, 2020, within 15 days of February 06, 2020.

I acknowledge that the Landlords had extinguished their right to claim against the security and pet damage deposits for damage; however, the Landlords did not claim for damage. The Landlords took the position they were entitled to keep the deposits on the sole basis that the Tenant extinguished her right to return of the deposits. As stated, the Landlords are not entitled to keep the deposits on this basis. However, I am not satisfied the Landlords failed to comply with section 38(1) of the *Act* and therefore I am not satisfied the Tenant is entitled to double the deposits back.

In summary, the Landlords must return \$900.00 to the Tenant. No interest is owed on the deposits as the amount owed has been 0% since 2009. The Tenant is issued a Monetary Order for \$900.00 pursuant to section 67 of the *Act*.

Given the Landlords were not successful in the Application, I decline to award them reimbursement for the \$100.00 filing fee.

Conclusion

The Landlords are not entitled to keep the security or pet damage deposits and must return \$900.00 to the Tenant. The Tenant is issued a Monetary Order for this amount. If the Landlords do not return \$900.00 to the Tenant, this Order must be served on the Landlords. If the Landlords fail to comply with this Order, it 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: March 30, 2020

Residential Tenancy Branch