



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Maple Leaf Property Management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was scheduled for 1:30 p.m. on August 14, 2020, via teleconference call, to deal with the landlord's monetary claim against the tenants and the landlord's request to retain all or part of the tenant's security deposit and pet damage deposit.

At the scheduled hearing date and time, only the tenants appeared for the hearing. The teleconference call was left open until 1:49 p.m. to give the landlord the opportunity to appear and the landlord did not.

The tenants stated they received notification of the landlord's claims against them via an email containing approximately 20 attached pages, on April 16, 2020, although the tenants stated they did not receive all of the landlord's documents. I noted that included in the landlord's evidence was an email addressed to the tenants on April 16, 2020 and uploaded as proof of service upon the tenants. At that time, service by email was permissible given the Director's Order issued in response to the COVID-19 pandemic.

The tenants acknowledged that at a later date they received a "revised" move-out inspection report from the landlord.

Despite their position they did not receive all of the landlord's documents, the tenants submitted they were prepared to respond to the claims against them based on the documents they did receive. Accordingly, I was satisfied the tenants were served with the landlord's claims and I was prepared to proceed with this claim.

Since the landlord did not appear for their hearing to present its claims against the tenants, and the tenants appeared and were prepared to respond to the claims against

them, I dismissed the landlord's Application for Dispute Resolution without leave to reapply.

Since the landlord had requested authorization to retain all or part of the tenant's security deposit and pet damage deposit, and the tenants testified they received only a partial refund of their deposits, in the amount of \$38.25, from the landlord I proceeded to explore disposition of the remainder of the tenant's security deposit and pet damage deposit in keeping with Residential Tenancy Policy Guideline 17: *Security Deposit & Set off*.

Issue(s) to be Decided

Are the tenants entitled to return of the remainder of the security deposit and pet damage deposit?

Background and Evidence

The tenants submitted that they paid a security deposit and pet damage deposit totalling \$1725.00. This sum is consistent with the tenancy agreement and the "revised" move-out inspection report submitted as evidence by the landlord.

The tenancy was set to end on March 31, 2020. The tenants testified they received a partial refund of their deposits, in the sum of \$38.25, from the landlord after their tenancy ended. The tenants did not authorize the landlord to retain any part of their deposits. The original and the "revised" move-out inspection report does not contain the tenant's written authorization for the landlord to make any deductions from their deposit; and, there is no other documentation submitted by the landlord that demonstrates the tenants authorized the landlord to retain any part of their deposits.

The move-out inspection report indicates the tenants did not appear to participate in the move-out inspection. The tenants testified the landlord did not invite them to participate in a move-out inspection. Rather, the landlord indicated a "walk-through" would be done between 11:00 and 1:00 and the keys had to be returned by 1:00 p.m. on March 31, 2020. The tenants were at the property shortly before 1:00 p.m. to remove the remainder of their possessions by 1:00 p.m. and return the keys but the landlord could not be located. They tried phoning the landlord and sending him emails but he did not meet with them to do a move-out inspection.

Analysis

Based on the evidence before me, I accept that the landlord collected a security deposit and a pet damage deposit totalling \$1725.00 and the landlord refunded \$38.25 of the deposits to the tenants, leaving a balance of \$1686.75 being held by the landlord.

The landlord made claims against the tenants' security deposit and pet damage deposit but the landlord's claims were dismissed given the landlord's failure to appear at the hearing scheduled to hear their claims.

Residential Tenancy Policy Guideline 17: *Security Deposit & Set off* provides for the following, in part:

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

As for extinguishment of their right to return of the deposits, I find insufficient evidence the tenants extinguished their right. As provided in sections 24 and 36 of the Act, a tenant extinguishes the right to return of the deposits if the tenant fails to participate in the move-in or move-out inspection of the rental unit at the beginning or end of the tenancy despite receiving two opportunities to do so from the landlord. The landlord provided a move-in inspection report that shows the tenant participated in the move-in inspection. The move-out inspection report indicates the tenants did not participate; however, the landlord did not provide any evidence to demonstrate the date(s) and time(s) the landlord proposed for the move-out inspection or the date and time the landlord actually performed the move-out inspection. Whereas, the tenants provided evidence the tenants were at the property at the time the landlord required them to return the keys and the landlord did not meet with them despite their attempts to contact

him. Finally, the landlord's actions of making a partial refund of the deposits and making a claim against the tenants' deposits is inconsistent with a landlord taking the position the tenants extinguished their right to return of the deposits. Therefore, I do not find the tenants extinguished their right to return of the deposits.

Since the landlord's claims against the tenants and their deposits have been dismissed, yet the landlord continues to hold \$1686.75 of their deposits, I order the landlord to return the balance of the deposits to the tenants, in the amount of \$1686.75, without delay. Provided to the tenants with this decision is a Monetary Order in the amount of \$1686.75 to ensure payment is made.

Conclusion

The landlord's Application for Dispute Resolution is dismissed without leave to reapply. The landlord is ordered to return the balance of the tenants' deposits, in the amount of \$1686.75, to them without delay. The tenants are provided a Monetary Order in the amount of \$1686.75 to ensure payment is made by the landlord.

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 19, 2020

Residential Tenancy Branch