



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

On May 12, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit.

The matter was scheduled as a teleconference hearing. The Tenants and Landlord. appeared at the hearing.

The hearing process was explained, and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

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

Background and Evidence

The Tenants and Landlord testified that the tenancy began on February 15, 2019, as a one-year fixed term tenancy. Rent in the amount of \$1,500.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$750.00.

The Tenants have applied for the return of \$600.00 from the \$750.00 security deposit.

The Tenants testified that on March 14, 2020 they participated in a move out inspection of the rental unit and a couple of things were found. They testified there were scratches present on walls and a door. The Tenants also stated that they did not match the paint colors correctly. The Tenants submitted that when the Landlord observed the damage, she wanted to keep the security deposit towards repair costs.

The Tenants testified that they agreed that the Landlord would complete the repairs.

The Tenants testified that they provided their forwarding address to the Landlord on February 14, 2020 and the Landlord has not returned any amount of the security deposit.

When asked whether or not they entered into a written agreement permitting the Landlord to keep an amount of the security deposit, the Tenants replied "yes". The Tenants testified that they signed the condition inspection report indicating that they agreed that the report fairly represents the condition of the rental unit and agreed that the Landlord could retain the \$750.00 deposit. The Tenants testified that they expected the Landlord to return any remainder of the deposit. The Tenants provided a copy of the Condition Inspection Report.

The Tenants stated that they believe the repairs should only cost \$150.00 and they are seeking the balance of \$600.00 from the security deposit.

In reply, the Landlord testified that at the move out inspection she offered an opportunity for the Tenants to return and make the repairs to the rental unit. She testified that the Tenants declined this opportunity.

The Landlord testified that the Tenants left the rental unit damaged and unclean. The Landlord hired a person to clean and repair the unit. The Landlord testified that the cleaning and repair costs exceeded the amount of the \$750.00 security deposit.

The Landlord testified that the Tenants signed off on the condition inspection report which permits her to keep the security deposit for the damage to the rental unit.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act provides that except as provided in subsection (4) within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(4) of the Act provides that a Landlord may retain an amount from a security deposit or a pet damage deposit if 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.

I note that the condition inspection report is signed by the Tenant. The Report provides the following language:

*I agree to the following deductions from my security and/or pet damage deposit.
In the field next to security deposit the amount \$750.00 is written.*

I find that there was a written agreement made by the parties at the end of the tenancy which permitted the Landlord to keep the security deposit of \$750.00 to pay an obligation of the Tenant. If the Agreement specified a lesser amount than the full deposit, the Landlord would be required to return the balance or apply to keep it within 15 days.

I find that the Landlord has the right to keep the entire security deposit based on the written agreement. The landlord is not obligated to return an amount to the Tenants. The Landlord testified that the repair costs exceeded the amount of the deposit she was entitled to retain.

I find that the Landlord has not breached the Act.

The Tenants' application for the return of a security deposit is dismissed without leave to reapply.

Conclusion

The Tenants application for the return of a security deposit was not successful. The Landlord had a right under the Act to keep the security deposit towards an obligation of the Tenants.

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 16, 2020

Residential Tenancy Branch