



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit pursuant to s.38 of the *Residential Tenancy Act* and for the recovery of the filing fee pursuant to s.72 of the *Residential Tenancy Act*.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be Decided

Did the landlord conduct move in and move out inspections and provide the tenant with copies of the reports? Did the tenant provide the landlord with his forwarding address in writing? Did the landlord return the security deposit or apply to retain the security deposit in a timely manner? Is the tenant entitled to the return of double the security deposit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The background facts are generally undisputed. The tenancy started on July 15, 2019 and ended on May 31, 2020. The monthly rent was \$1,700.00 due on the first of each month. At the start of the tenancy, the tenant paid a security deposit of \$850.00 and a pet deposit of \$150.00. The parties agreed that the landlord is currently holding the deposits in the total amount of \$1,000.00. The landlord agreed that he received the tenant's forwarding address on June 03, 2020.

The tenant stated that at the start of tenancy a move in inspection was not carried out and a report was not created by the landlord. The landlord argued that the parties viewed the rental unit together prior to signing the tenancy agreement and he considered this a move in inspection. The landlord also stated that a term in the addendum to the tenancy agreement served as a move in inspection report.

A Term in the addendum to the tenancy agreement states:

Upon moving out entire unit must be cleaned to the standards of move in date

Fridge, stovetop, oven, walls bathroom, floors etc.

The tenancy ended on May 31, 2020. On May 29, 2020, the landlord sent the tenant a request by email for an appointment to carry out a move out inspection. The tenant replied informing the landlord that since a proper move in inspection was not conducted, it was pointless doing a move out inspection because there was no report of the condition of the rental unit at the start of tenancy, for comparison. The tenant refused to participate in a move out inspection.

The parties corresponded by email citing legislation to each other regarding the return of the security and pet deposits. The landlord believed that because the tenant refused to participate in a move out inspection, he had extinguished his right to the return of the deposit. The tenant believed that because the landlord did not conduct a move in inspection, the landlord's right to make a claim against the deposit was extinguished.

The landlord informed the tenant that the unit was left in a dirty condition and that the lawn was damaged by the tenant's pet and therefore he was retaining \$700.00 from the deposits. The landlord returned \$300.00 by e-transfer which the tenant refused to accept.

The landlord stated that he gave the tenant \$700.00 off his rent for April as a good will gesture when the tenant fell on hard times due to the Pandemic.

Attempts to mediate a settlement between the parties failed as the parties could not agree on the amount of money that would change hands. The tenant agreed to allow the landlord to retain \$300.00 from the deposits. The landlord rejected the offer and countered at retaining \$500.00 from the deposits, an offer which was rejected by the tenant. In the end the parties could not come to an agreement.

Analysis

Sections 23 and 24 of the *Residential Tenancy Act* address the condition inspection report at the start of tenancy.

Condition inspection: start of tenancy or new pet

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

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.

Based on section 24(2)(c), the right of the landlord to claim against a security deposit or pet deposit or both for damages, is extinguished if the landlord did not complete a condition inspection report and give the tenant a copy of it.

In this case, the landlord referred to a term in the addendum to the tenancy agreement which states that the tenant must return the unit in the condition it was in at the start of tenancy. The landlord stated that this term serves as a move in condition inspection report. The term does not describe the condition of the unit at the start of tenancy and therefore I find that it does not serve as a condition inspection report.

Accordingly, pursuant to section 24(2)(c) I find that the right of the landlord to claim against the security deposit and the pet damage deposit, for damage to residential property is extinguished.

Sections 35 and 36 of the *Residential Tenancy Act* address the condition inspection report at the start of tenancy.

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a)on or after the day the tenant ceases to occupy the rental unit, or

(b)on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b)the tenant has abandoned the rental unit.

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 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.

Based on the testimony of both parties and the documents filed into evidence, I find that the landlord offered the tenant an opportunity to carry out the move inspection and the tenant declined. Therefore, pursuant to section 36(1)(b), I find that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished.

Based on the above, I find that the landlord's right to make a claim against the deposit is extinguished and the tenant's right to the return of the deposit is also extinguished.

Residential Tenancy Policy Guideline 17 addresses Security Deposit and Set off and states:

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.

In this case, as stated above, I have determined that both parties breached the Act and their rights to make a claim or to the return of the deposit have been extinguished.

Pursuant to *Residential Tenancy Policy Guideline 17*, since the landlord breached his obligation first, he must bear the loss.

The landlord currently holds \$1,000.00 for a security deposit and pet deposit. Accordingly, the landlord must return \$1,000.00 to the tenant. Since the tenant also breached section 36 of the *Act*, he is not entitled to the return of double the deposit and must bear the cost of filing his own application.

Overall, the tenant has established a claim of \$1,000.00. I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

In regard to the landlord's claims relating to loss that he may have suffered; I am not able to hear or consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. The landlord is at liberty to file his own application for damages against the tenant.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,000.00**.

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: October 27, 2020

Residential Tenancy Branch