Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for the return of their remaining security deposit that the Landlord is holding without cause; and to recover the $100.00 cost of their Application filing fee.

The Tenants, K.S. and M.B., the Landlord, J.W., and the Landlord's property manager, J.J., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing, and also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Prior to their testifying, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 1, 2018, with a monthly rent of $1,700.00, due on the first day of each month. They agreed that the Tenants paid the Landlord a security deposit of $850.00, and no pet damage deposit. The Parties agreed that the tenancy ended when the Tenants moved out on August 29, 2020, although they returned to clean on August 30, 2020. Both Parties agree that the Tenants provided the Landlord with their forwarding address via email on July 19, 2020.

The Tenants have applied for this hearing because the Landlord withheld $181.25 of the Tenants' security deposit and returned the rest of it. The Parties agreed that they conducted a move-in condition inspection report ("CIR"), although it was conducted by a different property manager and neither Party received a copy of the CIR. The Parties agreed that they conducted a move-out inspection of the condition of the rental unit, but not on the original CIR, because they did not have a copy of it.

The Tenants gave evidence that they "did everything as we were supposed to…", and yet they said the Landlord retained a portion of their security deposit. They said:

> We gave notice five weeks notice; we gave our forwarding address…. We cleaned 4 to 5 hours that day, as well as before that. He did go through that and ticked off boxes on the move-out that everything was in good condition. He said it had been returned to the original condition. There was nothing further that was needed to be done. We cleaned everything and had a carpet cleaner – my parents, helped - we vacuumed them, cleaned them; they were still wet when J.J. walked through.
>
> He acknowledged. We signed off that everything was good, so we expected our

> full deposit back. We hadn't heard from anyone and almost two weeks, so I reached out to [the Landlord] and she sent us a receipt for cleaning and other things to keep the deposit. There was no warning, no conversation. We understood the apartment was in good condition. We told her we had not agreed to that deduction. We were told to do this process or reach out to [J.J.]. The money was spent without our consent, knowledge, or any conversations. If something had been an issue with [J.J.], we would have had a chance to clean it. But he didn't think anything was wrong . . ..
>
> Why not contact us by [the Landlord] if she had issues. . . instead, we just got our security deposit returned minus the amount we are seeking – without any written consent from us. We contacted her immediately – we loved living there, and we kept it in great condition. We handled things ourselves. To end like this after everything that was going on was not what we had expected.

The Landlord said:

> Because we lacked the original walk-through [CIR], I created a move out – how to do a thorough move-out clean. I had conversations with [the Tenants]. They were inexperienced as to what a move-out clean was. I asked for a professional carpet cleaner, and I wanted a receipt. I would hire a professional cleaner. It has to be in the condition they found it in - in other words - perfect.
>
> I did make notes, and the first paragraph said that a paid receipt must be presented at the move-out walk-through to be certain that the carpet had been cleaned. They say they borrowed somebody's cleaner. That the carpet is wet is not proof that it was cleaned, just proof that it was wet. That receipt was specifically asked for. She and [M.B.] signed and [J.J] and that it was in good condition. But when I went in and swept the floor, I ran the broom in the kitchen, it picked up food on the floor, so I had to clean that. Vents in the microwave were filthy. All of this – there were prints everywhere. I had to deodorize the washer, and I had given them that deodorizer, and said to keep up with that. They didn't even have a vacuum cleaner.
>
> There were stains on the carpet, even after it was cleaned, the stains are still there. See pictures in my packet of information. I was unhappy with the end result. I knew I would have to hire someone to do the carpets. And I knew I would have to clean, which I didn't want to do. I noted that any additional cleaning would be charged at $50.00 an hour. They knew that too, and they were aware of

my expectations. I had to hire a carpet cleaner and do the cleaning. I only charged them $50.00, but I was there three hours cleaning. I felt that I could legally keep the money for those two specific things.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 32 of the Act states that tenants "…must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 helps interpret sections 32 and 37 of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.
>
> [emphasis added]

I find that the Landlord's expectation that the rental unit would be returned to her in "perfect" condition is inconsistent with the requirements of the Act and Policy Guidelines. Regardless, though, I find that this matter is determined by section 38 of the Act.

The Tenants provided their forwarding address to the Landlord in writing on July 19, 2020, and the tenancy ended on August 30, 2020. Section 38(1) of the Act states the following about the connection between these dates:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (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 Landlord was required to return the full $850.00 security deposit within fifteen days after August 30, 2020, namely by September 14, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The evidence before me is that the Landlord returned $668.75 to the Tenants and retained $181.25, but she did not apply to the RTB for an order granting her a monetary award against the Tenants. Therefore, I find that the Landlord failed to comply with her obligations under section 38(1).

Since the Landlord has failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the security deposit. There is no interest payable on the security deposit.

Policy Guideline #17 (“PG #17”) offers guidance in interpreting section 38 in different scenarios. For example,

> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
>
> • if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant’s forwarding address is received in writing.

Further, PG #17 provides examples to illustrate calculating the amount owing by the Landlord to the Tenant.

> The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
>
> • Example A: A tenant paid $400 as a security deposit. At the end of the tenancy, the landlord held back $125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.
>
> The arbitrator doubles the amount paid as a security deposit ($400 x 2 = $800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $525.00 ($800 - $275 = $525).

Accordingly, since the Landlord did not return the full security deposit, nor did she apply to the RTB for an order to keep any of the deposit, I find that the Tenants' security deposit must be doubled, and the amount returned deducted. The Tenants' $850.00 security deposit becomes $1,700.00, less the $668.75 the Landlord returned to the Tenants, which equals $1,031.25. I also award the Tenants with recovery of their $100.00 Application filing fee from the Landlord, pursuant to section 72 of the Act.

Therefore, pursuant to section 67 of the Act, I award the Tenants with a Monetary Order of **$1,131.25** from the Landlord for the Landlord's failure to comply with section 38.

Conclusion

The Tenants are successful in their Application for the return of the security deposit that the Landlord withheld contrary to section 38 of the Act. As the Landlord failed to comply with section 38, and according to section 38(6), the Landlord is required to pay the Tenants double the security deposit, less the amount she has already returned to them. The Tenants are also awarded their $100.00 Application filing fee from the Landlord.

I grant the Tenants a Monetary Order under section 67 of the Act from the Landlord in the amount of **$1,131.25.**

This Order must be served on the Landlord by the Tenants and may be filed in the

Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 5, 2021

Residential Tenancy Branch