



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aragon Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNSD, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with the tenant's application pursuant to the *Act* for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenant RC attended the hearing and the landlord was represented at the hearing by property manager, EN ("landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Application for Dispute Resolution and the tenant acknowledged service of the landlord's evidence. Neither party raised any concerns with timely service of documents.

Issue(s) to be Decided

Is the tenant entitled to compensation for the return of his security deposit?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all

details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed one year tenancy began on April 1, 2020 and was scheduled to end on March 31, 2021. Rent was set at \$2,650.00 per month, payable on the first day of the month. A security deposit of \$1,325.00 and a pet damage deposit of \$1,325.00 was collected by the landlord at the commencement of the tenancy.

The tenant ended the tenancy early on November 30, 2020. On that day, the parties conducted a move out condition inspection report and both parties signed it. The tenant provided his forwarding address on the condition inspection report dated November 30th and a copy of the report was provided by both parties as evidence. On part Z (end of tenancy), the landlord does not note any damage to the rental unit for which the tenant is responsible. The tenant indicates on part Z1 that he does not agree that the report fairly represents the condition of the rental unit for the reason that *"based on our lease agreement by [landlord] that the blinds must be removed prior to our leaving"*. Part Z2 is left blank on the condition inspection report, the spot where the tenant could agree to deductions from his security deposit or pet damage deposit. However, an addendum named "security deposit refund" was signed by both parties whereby the landlord deducts \$125.00 from \$2,650.00 deposits for the for blinds and drapes. The amount owing to the tenant on the addendum is \$2,525.00 and both the landlord and tenant signed it. The tenant acknowledges receiving the \$2,525.00 from the landlord.

The tenant testified that prior to the condition inspection report on November 30th, the blinds were not removed to be cleaned by the landlord. Even after he left, the blinds were still left up. The tenant testified that he felt the \$125.00 retained by the landlord was arbitrary, since he understood that the landlord would remove the blinds and clean them to the satisfaction of both the tenant and the landlord before the end of the tenancy. The tenant acknowledges the tenancy agreement contained a clause that states *the drapes and binds shall be professionally cleaned as recommended by the landlord, by the tenant at the tenant's expense immediately prior to the tenant vacating the premises* (clause 38), however the tenant argues the landlord acted arbitrarily and not in good faith.

The landlord gave the following testimony. The tenancy agreement addendum, signed by the tenant, had two clauses regarding blind cleaning. The second clause reads *If drapes blinds, and/or carpets are not professionally cleaned at the end of the tenancy,*

the tenant agrees, on vacating the residential premises to pay to the landlord for equivalent professional cleaning. (clause 26)

The landlord testified that the blinds were professionally cleaned on December 16, 2020 and the landlord provided an invoice in the amount of \$231.00 for the work. The landlord argues that the tenant's security deposit and pet damage deposit in the amount of \$2,525.00 was returned to the tenant within 15 days of the tenancy ending and receiving the tenant's forwarding address. The tenant signed the "security deposit refund" document attached to the condition inspection report agreeing to the deduction of the \$125.00 for the blind and drape cleaning.

The landlord didn't charge the tenant a fee to end the fixed term tenancy early and only collected \$125.00 of the \$231.00 it cost to clean the blinds. The landlord did not file an application to retain \$125.00 of the tenant's security deposit because she had the tenant's agreement in writing to retain it on the condition inspection report addendum, "security deposit refund".

Analysis

The parties agree that the tenancy ended on November 30, 2020 and the tenant gave the landlord his forwarding address on the same date. Section 38(1) of the *Act* states:

Return of security deposit and pet damage deposit

- 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.

38(4) states:

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) 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 find that on the "security deposit refund" document attached to the condition inspection report signed on the last day of the tenancy, the tenant agreed in writing that the landlord may deduct \$125.00 from his security deposit for the blind cleaning. I also find

that the tenant signed clauses 26 and 38 of the tenancy agreement which both describe the circumstances that allow the landlord to charge the tenant for the cleaning of the blinds at the end of the tenancy.

I do not accept the tenant's reasoning that he expected the landlord to remove the blinds for cleaning prior to the end of the tenancy as such an action would deprive the tenant of privacy during his tenancy and breach the tenant's right to quiet enjoyment.

I find the landlord complied with section 38(1) of the *Act* and returned the tenant's full pet damage deposit and the tenant's security deposit less the \$125.00 the landlord was entitled to retain in writing by the tenant in accordance with section 38(4). As the tenant has acknowledged he's received both deposits, less the \$125.00 blind cleaning charge, I dismiss the tenant's application seeking a return of the remainder of the security deposit without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: April 26, 2021

Residential Tenancy Branch