



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSDB-DR, FFT

Introduction

This review hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for the return of the security and pet damage deposit pursuant to section 38.1; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent (the "Landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the original decision and order of November 20, 2020 be upheld, set aside or varied?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in April 2017. A security deposit of 4850.00 and pet damage deposit of \$775.00 were paid at the start of the tenancy. The parties prepared a move-in condition inspection report.

The tenancy ended July 31, 2019. The parties did not prepare a move-out condition inspection report together. The tenant testified that they did not authorize the landlord to make any deductions from the deposits.

The tenants provided a forwarding address in writing to the landlord on July 17, 2019 and subsequently by email on August 8, 2019. The landlord returned the amount of \$292.84 to the tenants and retained the balance of the deposits.

The tenants submit that the landlord did not agree to a time and date for a move-out inspection. They say that while the parties were present in the rental unit on July 31, 2019 and August 2, 2019 no condition inspection report was prepared.

The Landlord submits that they attempted to schedule a time for the move-out inspection but it was the tenants who declined to participate. The Landlord testified that the inspection was scheduled for July 31, 2019 but the tenants were unprepared and requested the inspection be rescheduled. The Landlord submits that they made many attempt to contact the tenants to schedule a mov-out inspection but were unable to receive a response. The Landlord says that they concluded that the tenants had failed to attend a move-out inspection despite being provided multiple opportunities and had thus waived their right to the deposits.

Analysis

Section 38 of the *Act* requires a landlord to either return all of a tenant's security and pet damage deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written

authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

Section 35 provides the requirement of a landlord and tenant to inspect the rental unit together and the obligation of a landlord to provide at least 2 opportunities for the inspection.

The parties disagree as to whether the landlord provided 2 opportunities as required under the *Act*. The parties agree that they were both in attendance at the rental unit on July 31, 2019 and August 2, 2019 but that a condition inspection report was not performed at those times. The landlord submits that the tenant declined to participate in a move-out inspection on the 31st as scheduled and they ultimately prepared a report in the absence of the tenants on August 1, 2019.

I find insufficient evidence in support of the landlord's position that the move-out inspection was scheduled for the 31st. I find the testimony of the landlord's agent, disputed by the tenant, to be insufficient to demonstrate on a balance of probabilities that there was an agreement to perform a move-out inspection on that date. The parties did not provide into evidence documentary materials such as correspondence or notices of the time and date of an inspection. The only reference made that the move-out inspection was scheduled for the 31st is an email correspondence from the landlord's agent reporting to the landlord after a report was not completed. I am not satisfied with the evidence that the parties had agreed to a time and date for the inspection or that the landlord had provided the tenant with at least 2 opportunities as set out in the *Act*.

Based on the evidence I find that the landlord has not provided the tenants with 2 opportunities for a move-out inspection as required under section 35 of the *Act* and have thus waived their right to retain the deposits pursuant to section 36(2).

Accordingly, I find that the tenants are entitled to a monetary award in the amount of double the security and pet damage deposit for this tenancy less the amount previously returned by the landlords.

I also find that the tenants are entitled to a monetary award for the return of the filing fees for their application.

Conclusion

The decision and order of November 20, 2020 are confirmed.

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 19, 2021

Residential Tenancy Branch