



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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.

Both the tenant and the landlord attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Application for Dispute Resolution and evidence although states that some evidence was received late. The tenant testified he served the late evidence was served by leaving the documents in the landlord's letterbox on August 12th. The landlord acknowledges receiving the documents which comprise of statements made by the tenant and hydro bills. I advised the parties that the only issue before me was whether the security deposit should be returned, not any issues of "traumatization" as alleged by the tenant when he filed the late documents. Having had the opportunity to read the documents, the landlord advised she did not seek an adjournment to consider the new evidence and was prepared to have the merits of the tenant's application heard. The tenant's documentary evidence was admitted.

The tenant acknowledged receipt of the landlord's evidence and the landlord's evidence was likewise admitted.

Issue(s) to be Decided

Should the tenant's security deposit be returned?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, 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.

The parties agree on the following facts. The rental unit is a separate unit located in the landlord's house. The parties did not share a kitchen or a bathroom. A copy of the tenancy agreement was provided as evidence. The fixed one-year tenancy began on July 1, 2016 becoming month to month at the end of the fixed term. Rent was originally set at \$1,500.00 per month and a security deposit of \$750.00 was collected by the landlord which she continues to hold. A pet damage deposit was collected but was returned to the tenant at the end of the tenancy. A condition inspection report was conducted and signed by both parties at the commencement and end of the tenancy.

The tenancy ended on February 28th and the parties both attended the rental unit for a condition inspection report. The tenant acknowledges putting up a number of shelves and pictures on the walls, making several holes in the walls. On move out, the tenant filled the majority of the holes, sanded the walls and had them prepared for paint. The tenant painted all the rooms except for 1 small room he didn't prepare the holes for. The tenant thinks there were less than a dozen holes. The tenant testified the landlord got upset the walls and paint were not finished upon move out and gave the tenant one week to get it done. On the condition inspection report, at part Z2, it states:

I, [tenant] agree to the following deductions from my security and/or pet damage deposit:

Security deposit: painting to be done by tenants by Sunday March 7th, 2021 at 5 p.m. -750.00 in lieu of non painting. Dated 28/02/21 [tenant's signature]

The landlord acknowledges she filled in the statement above and the tenant signed it. I note the tenant provided his forwarding address on the condition inspection report completed on February 28th.

On March 2, the landlord sent a text stating that she is not comfortable with the arrangement. The landlord would prefer to come to an agreement on a charge and let

the landlord get someone to come do the work. The landlord believes a painter could do the work for between \$900 and \$1,000.00 and the landlord would be willing to return \$250.00 of the tenant's security deposit as well as the pet damage deposit and call it a day. A copy of the landlord's text was provided as evidence.

The tenant testified that they hired a painter to paint the remaining areas of the rental unit that were unpainted and that it would happen on Saturday, March 6th. That Saturday, the tenant got a call from the landlord and an email saying the painter hired by the tenants failed to show up. The tenant didn't know when the painter was to show up, therefore the tenant didn't have the chance to make up their side of the agreement. The tenant argues that his opportunity to fulfil his obligation to paint the remainder of the rental unit by March 7th was denied by the landlord and the landlord has kept his security deposit without his consent.

The landlord gave the following testimony. The tenant and his family used excessive nails, screw holes and large nails throughout the house. The landlord recorded close to 200 holes. The tenant's spouse did not get along with the landlord and the landlord offered an alternative to the tenants coming back to paint, hiring somebody. The tenant found a painter "S" and after confirming the painter had insurance, the landlord was happy to use him. Arrangements were made for the painter, S, to come on Saturday, March 6th to paint the house however S didn't show up. The landlord contacted S and agreed to come by before the deadline of March 7th, but S never did reattend.

The landlord couldn't wait, so she hired another painter to paint the walls and provided a copy of that painter's invoice.

The landlord testified she didn't file an Application for Dispute Resolution Proceedings seeking an order to retain the tenant's security deposit because she had the tenant's agreement on the condition inspection report to retain the security deposit on specific terms. The terms of the agreement were not fulfilled by the tenant.

Analysis

Pursuant to section 38(1) of the Residential Tenancy Act, a landlord must repay a tenant's security deposit or make an application for dispute resolution claiming against the security deposit within 15 days after the tenancy ends and the date the landlord receives the tenant's forwarding address in writing.

Pursuant to section 38(4)(b), the landlord may retain an amount from the security deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

In this case, I am satisfied that the end date for the tenancy and the date the tenant supplied his forwarding address to the landlord was February 28th. The landlord did not file an application to claim against the security deposit or return the tenant's security deposit by March 15th, fifteen days after February 28th. The landlord's reasoning for not doing either action was because the landlord had the tenant's agreement in writing to retain the security deposit under a specific condition, painting before 5 p.m. on March 7th.

The tenant argues that his opportunity to fulfil his obligation to paint the rental unit and thereby recover his security deposit was denied by the landlord. The facts of this case do not support such an argument. The parties agree that it was the tenant who chose "S" to paint the landlord's unit in lieu of the tenants doing it themselves. The landlord apparently had no issues with "S" doing the work, as long as it was done by the deadline as agreed to by the parties. The evidence bears that the landlord even rescheduled "S" to come by before the deadline of Sunday, March 7th to complete the painting when "S" failed to show up on the 6th.

A tenant is obligated pursuant to section 32 to repair any damage done to the rental unit before returning it to the landlord. Damage includes repainting walls that were previously marked with screw holes and patched. In this case, the landlord gave the tenant an additional seven days to comply with section 32 even though she was under no obligation to do so. The tenant agreed to the term of finishing the incomplete painting within those 7 days or allow the security deposit to be forfeited. The fact that the painter hired by the tenant failed to do so is unfortunate, but the burden to ensure it gets done by the deadline falls upon the tenant in this case. The landlord is under no obligation to extend the deadline to provide additional time to repaint the unit after the tenancy ended.

I find that the landlord had the tenant's agreement in writing to retain the security deposit pursuant to section 38(4)(a). I order that the landlord retain the tenant's entire security deposit of \$750.00 pursuant section 38(4)(b). The tenant's application to recover the security deposit is dismissed 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 application is dismissed without leave to reapply. The landlord is entitled to retain the tenant's security deposit in the amount of \$750.00 pursuant to section 38(4)(b) of the Act.

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: August 30, 2021

Residential Tenancy Branch