



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 07, 2021 (the “Application”). The Tenant applied for return of double the security deposit as well as reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with E.A. to assist. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy start date was June 01, 2019. The tenancy was for a fixed term ending May 31, 2020. Rent was \$1,650.00 per month due on the first day of each month. The Tenant paid a \$825.00 security deposit. The agreement was signed by the Landlord on May 17, 2019 and the Tenant on May 16, 2019.

The Landlord testified that the tenancy agreement in evidence is accurate. The Tenant agreed they signed the tenancy agreement and that it represents the agreement between the parties.

The parties agreed the tenancy was ended May 22, 2019, prior to the start date of the tenancy.

The Tenant submitted a "Mutual Agreement To End A Tenancy" document dated May 22, 2019 signed by both the Landlord and Tenant which states:

At the tenant's request, both the landlord and tenant mutually agrees to immediately terminate the lease agreement set to begin on June 1, 2019.

The tenant agrees to compensate the landlord half a month's rent (\$825.00) which is to be released to the landlord from the damage deposit already paid by the tenant...

(emphasis added)

The Tenant testified as follows. The parties did not come to an agreement about the amount of the security deposit that could be kept. The Tenant requested return of the security deposit on several occasions. The Tenant never obtained the keys for the rental unit or took possession of the rental unit. The Tenant was forced to sign the above "Mutual Agreement To End A Tenancy" because otherwise the Tenant would have had to continue with the tenancy agreement. The Tenant was forced to sign the tenancy agreement. The signing of the tenancy agreement involved a high pressure interaction where the Landlord told the Tenant they would lose the rental unit if they did not sign the tenancy agreement and if they took a day or two to review the tenancy agreement.

In response to my questions, the Tenant acknowledged they could have chosen not to sign the tenancy agreement and stated that then the Landlord would have offered the rental unit to other tenants.

The Landlord referred to the “Mutual Agreement To End A Tenancy” in relation to the reason they kept the security deposit. The Landlord denied forcing the Tenant to sign the tenancy agreement or “Mutual Agreement To End A Tenancy”. The Landlord pointed out that it is part of the normal course of business that the Landlord offers the rental unit to whichever tenant signs a tenancy agreement first. The Landlord testified that the unit was not re-rented until July 01, 2019 and submitted a copy of a new tenancy agreement to support this.

The documentary evidence submitted includes the following:

- A request for return of the security deposit from the Tenant to the Landlord dated September 24, 2019
- The “Mutual Agreement To End A Tenancy”
- An email from the Tenant to the Landlord dated May 20, 2019 seeking to end the tenancy agreement and asking for return of the security deposit
- Emails between the parties about the “Mutual Agreement To End A Tenancy”
- An email from the Tenant to the Landlord dated May 22, 2019 referring to the “Mutual Agreement To End A Tenancy” and asking that the security deposit be returned if the Landlord finds new tenants for June 01, 2019
- An email from the Tenant to the Landlord dated October 19, 2019 asking for the security deposit back
- An e-transfer showing the Tenant paid the security deposit May 16, 2019
- Text messages between the Tenant and E.A. starting May 10, 2019 discussing two rental units, the Tenant indicating on May 15, 2019 that they will take the rental unit and a further discussion about meeting to sign the tenancy agreement. The text messages show the parties met May 16, 2019 in relation to signing the tenancy agreement. There is the following exchange between the parties:

Hi, I'm here (May 16, 18:03)

Hey, [Tenant] when you are ready to send me the lease, please email it to me at [address]. Thanks (May 16, 18:41)

Hey, [Tenant], the landlord is asking if you are going to send back the application to us tonight? He wants me to proceed with another tenant if I don't get it by 9pm. (May 16, 20:22)

I will send it (May 16, 20:25)

Analysis

Section 38 of the *Residential Tenancy Act* (the “*Act*”) sets out the obligations of a landlord in relation to security deposits held at the end of a tenancy and states:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(emphasis added)

I find the Landlord was entitled to keep the \$825.00 security deposit pursuant to section 38(4)(a) of the *Act* further to the "Mutual Agreement To End A Tenancy" in which the Tenant agreed as follows:

The tenant agrees to compensate the landlord half a month's rent (\$825.00) which is to be released to the landlord from the damage deposit already paid by the tenant...

I do not accept the submissions of the Tenant or find that they change the entitlement of the Landlord to keep the security deposit.

It is not accurate that the parties did not come to an agreement about the amount of the security deposit that could be kept as the “Mutual Agreement To End A Tenancy” specifically states that \$825.00 of the security deposit can be kept.

I do not find it relevant that the Tenant asked for return of the security deposit before and after signing the “Mutual Agreement To End A Tenancy”. The “Mutual Agreement To End A Tenancy” is clear that the Tenant is agreeing to the Landlord keeping the security deposit. In relation to the requests for return of the security deposit prior to the Tenant signing the “Mutual Agreement To End A Tenancy”, the Tenant should not have signed the “Mutual Agreement To End A Tenancy” if they did not agree to the Landlord keeping the security deposit. In relation to the requests for return of the security deposit after the Tenant signed the “Mutual Agreement To End A Tenancy”, the Tenant is not entitled to return of the security deposit because they changed their mind after signing the “Mutual Agreement To End A Tenancy”, which is a legally binding agreement.

It is not relevant that the Tenant never took possession of the rental unit. Section 16 of the *Act* states:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect **from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.** (emphasis added)

The parties were bound by the tenancy agreement, which was a legally binding contract, as of May 16, 2019 when the Tenant signed the tenancy agreement and paid the security deposit and this was accepted by the Landlord. The Landlord was entitled to seek to keep the security deposit when the Tenant sought to end the tenancy and the parties signed the “Mutual Agreement To End A Tenancy”. Had the Tenant not agreed to the Landlord keeping the security deposit, the Landlord could have applied to the RTB to keep the security deposit if there was a basis to do so, such as loss of rent for June.

I do not accept that the Tenant was forced to sign the tenancy agreement. Tenancy agreements can be invalidated when a party signed the agreement under duress. Duress refers to a coercion of will so as to vitiate consent. The relevant factors when considering duress include:

- whether the coerced party protested;
- the availability of alternative courses of action;
- the existence of independent legal advice; and

- whether the coerced party took steps to avoid the contract.

The Tenant states that they were forced to sign the tenancy agreement because the Landlord said they would let other tenants have the rental unit if the Tenant did not sign the tenancy agreement. I agree with the Landlord that offering a rental unit to the first tenants who agree to sign a tenancy agreement is part of the normal course of business in rental transactions and I do not find that the Landlord did anything unusual or inappropriate in this matter. I have reviewed the text message exchange between the parties, which is outlined above, and do not find that the exchange supports an argument of duress. The Tenant had two options, to sign the tenancy agreement and get the rental unit or not sign the tenancy agreement and not get the rental unit. The consequences of the two options open to the Tenant were the usual and logical consequences that flow from these types of decisions. I do not accept that the Landlord imposing a time limit on the decision to sign the tenancy agreement amounts to duress.

I do not accept that the Tenant was forced to sign the “Mutual Agreement To End A Tenancy”. Again, the Tenant had two options, to sign the “Mutual Agreement To End A Tenancy” or to not sign the “Mutual Agreement To End A Tenancy”. The Tenant argued that they were forced to sign the “Mutual Agreement To End A Tenancy” because otherwise they would have had to follow through with the tenancy agreement. Having to follow through with the tenancy agreement was the legal consequence of signing the tenancy agreement, which was a legally binding contract. Signing the “Mutual Agreement To End A Tenancy” to avoid the legal consequences of signing the tenancy agreement is not duress.

Given the above, the Landlord was entitled to keep the security deposit. The Tenant is not entitled to return of the security deposit. Nor is the Tenant entitled to return of double the security deposit.

Given the Tenant was not successful in the Application, the Tenant is not entitled to reimbursement for the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 20, 2021

Residential Tenancy Branch