



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing was held, via teleconference, on October 14, 2021. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

The Tenants and the Landlords all attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties confirmed that the Tenants moved in at the start of August 2020, and a move in inspection was done on August 2, 2020. The parties agreed that monthly rent was set at \$1,550.00, and was due on the first of the month, and that the Tenants paid a security deposit of \$775.00, which is still held by the Landlords.

The parties also agreed that the tenancy ended on March 31, 2021, which is the day the Tenants moved out, the day they returned their keys, and the day the move-out inspection was done.

The Landlord confirmed receipt of the Tenants' forwarding address in writing on March 31, 2021, at the bottom of the move-out condition inspection report. The Landlords confirmed that they did not file an application against the deposit.

The Tenants stated that after the end of tenancy walk-through condition inspection was done with one of the Landlords, both Tenants signed the condition inspection report, as did one of the Landlords. The Tenants stated that, following this, the other Landlord continued filling in the condition inspection report with items that they did not agree to for various damages. The Landlords agree that only one of them was initially present, at the time the move-out inspection was done, and the report was completed, and the other Landlord acknowledged adding some "clarity" to a few items with her own writing, after the report had been signed by the Tenants.

The Tenants acknowledged that they signed the part of the condition inspection report which says they agreed to the Landlord keeping the full security deposit, but they point out that this was signed on August 2, 2020, which was right when they moved in (as shown by the date beside the signature). The Tenants assert that it was a mistake to agree to forfeit the deposit before the tenancy had even started and that this is not what they intended. The Tenants deny signing or agreeing to any deductions at the end of the tenancy.

The Landlords do not deny that the Tenants mistakenly signed, forfeiting the deposit, at the start of the tenancy. However, the Landlords pointed to the adjacent signed initials (signed at the time of the move-out inspection) of one of the Tenants at the deductions portion of the condition inspection report. The Landlords assert that this was the Tenants agreeing to forfeit their deposit, at the end of the tenancy. The Tenants deny that this is what their initials on this part of the form means, and they assert that by putting their initials at the end, it was only them agreeing to the contents of the report at

that time (which the Tenants assert was subsequently modified by one of the Landlords), not to any deductions as the Landlords are asserting.

Analysis

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

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenants moved out of the rental unit on March 31, 2021, which I find reflects the end of the tenancy. The Landlords confirmed that they got the Tenants' forwarding address in writing on this same day. I find the Landlords received the Tenants' forwarding address in writing on March 31, 2021.

Deductions from Security Deposit

Having reviewed the evidence and testimony on this matter, I accept that the Tenants mistakenly signed the condition inspection report at the start of the tenancy, indicating they agreed to forfeit the security deposit, in full. This does not appear to be in dispute. What is in dispute is whether or not one of the Tenants' initials (in the adjacent section of the condition inspection report) is an agreement, at the end of the tenancy, for the Landlords to retain the deposit. I note the Tenants agree they initialed this portion of the form, and they only initialed that part to show they agreed to the condition inspection report contents noted above (as it was written at the time of move-out). The Tenants deny there was any agreement about deductions, or that this is what their initial means.

Having reviewed the documentary evidence and testimony regarding this particular portion of the condition inspection report (the area regarding deductions), I do not find it is sufficiently clear, such that I could find the Tenants and the Landlords came to an agreement about the deductions from the security deposit, at the end of the tenancy. Section 38(4) of the *Act* highlights that any agreement regarding deductions must be made at the end of the tenancy. Having reviewed the condition inspection report, I note the Tenant's initials are actually closer to an adjacent section of the condition inspection report, rather than to the deductions portion. I also note there is a line connecting the

initial, with the deductions section. However, it is not sufficiently clear when this line was written and whether or not this actually means the Tenant's initial means they agree to the section below where it was written (for deductions). Ultimately, I do not find there is sufficient evidence that the Tenants and the Landlords agreed, in writing, to any deductions from the deposit at the end of the tenancy.

Absent a clear agreement, in writing, at the end of the tenancy that the parties agreed to deductions from the deposit, I find the Landlords were required to either file an application against the deposit, or return the deposit, in full, within 15 days of receiving the Tenant's forwarding address in writing and the end of the tenancy.

Pursuant to section 38(1) of the Act, the Landlords had 15 days from receipt of the forwarding address in writing (until April 15, 2021) to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlords did neither and I find the Landlords breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit (\$775.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I issued the Tenants a monetary order for \$1,650.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act* and for the filing fee.

Conclusion

I grant the Tenants a monetary order in the amount of **\$1,650.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: October 14, 2021