Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- authorization to obtain a return of all of the security and pet damage deposits (collectively, the "**deposits**") pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was assisted by his daughter ("**TS**").

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Increase in Tenant's Monetary Claim

The tenant has applied for the return of the deposits. However, Residential Tenancy Branch (the "**RTB**") Policy Guideline 17 states:

> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit [if certain conditions are met].

At the outset of the hearing, I asked the tenant is she was waiving her entitlement to claim for the return of double the deposits. She stated that she was not. As such, despite the tenant not having applied for the return of double the deposits, I will consider whether she is entitled to this in the decision.

Issues to be Decided

Is the tenant entitled to:

1) a monetary order for an amount equal to double the deposits; and

2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting June 1, 2020. Monthly rent was $1,900 and was payable on the first of each month. The tenant paid the landlord a security deposit of $950 and a pet damage deposit of $950, which the landlord retains.

The parties conducted a move in condition inspection at the start of the tenancy. A copy of the move-in condition inspection report was submitted into evidence.

The tenancy ended on July 2, 2021, when the tenant vacated the rental unit. The tenant and the landlord's realtor conducted a move-out condition inspection on July 5, 2021. The landlord testified that he was aware that his realtor was conducting this inspection on his behalf. A copy of the move-out condition inspection report (the "**move-out report**") was entered into evidence. The tenant provided her forwarding address on this report. The landlord's realtor, and not the landlord, signed the move-out report on behalf of the landlord.

On the move-out report, the tenant and landlord's realtor recorded the following:

> **Z.** Damage to rental unit or residential property for which the tenant is responsible:
>
> None. Cleaning $150, small touch up paint $50

The tenant testified that she and the realtor agreed that the landlord could deduct $200 from the deposits in satisfaction of these amounts.

They then completed the portion of the move-out report form regarding deposits deductions as follows:

> **2.** I, [the tenant], agree to the following deductions from my security and slash or pet damage deposit:
>
> Security deposit: $800 Pet damage deposit: $900

The tenant testified that she understood, and that she and the realtor meant, that these figures represented the amount of the deposits that would be returned to her. The

realtor did not attend the hearing to provide testimony and did not provide any written statement on this, or any other issue.

The tenant testified that the landlord did not return any portion of the deposits to her within 15 days of her providing her forwarding address, or at all. Neither did he make an application claiming against the deposits within 15 days or at all.

The landlord testified that the tenant caused significant damage to the rental unit beyond the specifics indicated on move-out report at section "Z". He stated that she damaged the carpet, the blinds, the paint throughout the rental unit, and the sink. He submitted photos of this damage. He testified that the cost of repairing this damage exceeded the $200 the landlord's realtor and the tenant agreed could be deducted from the deposits. He testified that he tried to negotiate a new amount to deduct from the deposits with the tenant, but that she refused. As such, and as the cost of repairing the damage he alleged was caused by the tenant was greater than the amount of the deposits, he kept the deposits.

The tenant denied that she caused any of the damage alleged by the landlord. She argued that, where any damage existed, it amounted to reasonable wear and tear.

Analysis

1. Validity of Move-Out Report

I do not find there is any basis to set aside the move-out report on the basis that the landlord's realtor, and not the landlord, conducted the move-out inspection and signed the ensuing report.

Section 35(1) of the Act requires the landlord and tenant to conduct a move-out condition inspection.

Section 1 of the Act defines "landlord" to include

> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
> […]
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

The landlord is the owner of the rental unit. The relator was his agent or another person who "performed duties under the Act" (by conducting the move-out inspection). The landlord knew the realtor was conducting the move-out inspection and did not object to it. There is no indication that the realtor, at the time he conducted the inspection, was acting outside the scope of his authority by completing the move-out report or by entering into an agreement whereby the landlord could retain a portion of the deposits.

The landlord's evidence is that it was only after he saw the condition of the rental unit for himself that he took the position that the tenant should be required to compensate him for more damage. There is no suggestion that he was of this opinion prior to seeing the condition of the rental unit for himself or objected to the realtor entering into any agreement with the tenant on his behalf.

2. Amount Agreed to be Deducted

Given that section "Z" of the move-out report indicates that the tenant is responsible for $150 for cleaning and $50 for paint touch ups, I find that the parties agreed the landlord could retain $200 of the deposits. I do not find that section "2" of the move-out report means that the landlord is entitled to retain *all but* $200 of the deposits. Rather, based on this and the tenant's testimony, I find it more likely than not that this section was filled out incorrectly by parties, and they intended it to capture the amount of the deposits the landlord would return, as opposed to the amount the landlord could keep. At no point during the hearing did the landlord assert that the agreement made between the realtor and the tenant permitted him to retain $1,700 of the deposits, as opposed to $200.

For the foregoing reasons, I find the parties agreed that the landlord could retain $200 of the deposits ($150 of the security deposit and $50 of the pet damage deposit).

I explicitly make no finding as to whether this agreement means that the landlord is precluding from recovering a further amount from the tenant for additional damage to the rental unit caused by the tenant. Furthermore, I explicitly do not make any finding as to whether the tenant caused the damage alleged by the landlord, or, if she did, whether such damage amounts to reasonable wear and tear. Such findings would fall outside the scope of this application.

3. Is the tenant entitled to the return of double the deposits?

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
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> 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.

Based on the testimony of the parties, I find that the tenancy ended on July 2, 2021 and that the tenant provided her forwarding address in writing to the landlord on July 5, 2021.

I find that the landlord has not returned the security deposit to the tenant within 15 days of receiving her forwarding address, or at all.

I find that the landlord has not made an application for dispute resolution claiming against the deposits within 15 days of receiving the forwarding address from the tenant.

It is not enough for the landlord to allege the tenant caused damage to the rental unit. He must actually apply for dispute resolution, claiming against the security deposits, within 15 days from receiving the tenant's forwarding address.

The landlord did not do this. Accordingly, I find that he has failed to comply with his obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

> (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.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that he pay the tenant double the amount of the security deposit. RTB Policy Guideline 17 provides an example as to how this amount may be calculated when an amount has previously been deducted from a deposit:

> Example B: A tenant paid $400 as a security deposit. During the tenancy, the parties agreed that the landlord use $100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.
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> The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is $600.00 ($400 - $100= $300; $300 x 2 = $600).

As such, the landlord must pay the tenant $3,400 ($1,900 - $200 = $1,700; $1,700 x 2 = $3,400)

As the tenant has been successful in her application, she is entitled to have her filing fee of $100 repaid by the landlord.

Conclusion

Pursuant to sections 65 and 72 of the Act, I order that the landlord pay the tenant $3,500, representing the repayment of the filing fee and of double the portion of the deposits the tenant did not agree that the landlord may retain.

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: March 4, 2022

Residential Tenancy Branch