Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, MND, O

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

Landlord OC (the landlord) confirmed that the tenants handed a copy of their dispute resolution hearing package to one of the landlords' office representatives in late October 2012. I am satisfied that the tenants served the landlords with a copy of their dispute resolution hearing package in accordance with the *Act.*

The landlord testified that he sent the female tenant (the tenant) a copy of the landlords' dispute resolution hearing package by registered mail on December 19, 2012. He provided the Canada Post Tracking Number to confirm this registered mailing. The tenant testified that she was unaware of the landlords' application for dispute resolution. The landlord said that he had assumed that she had received it because it had not been returned. He testified that the landlord's application identifying the female tenant as the sole tenant was sent under the first two names appearing above in the tenants' application for dispute resolution (i.e. LS). The tenant said that this is not her correct name, but her first two given names. She noted that the tenants' Residential Tenancy

Agreement (the Agreement) with the landlord and all of her signatures both on the Agreement and on any other documents use her surname (e.g., LB or LSB).

Under these circumstances, I advised the parties that I was not satisfied that the tenant could have signed for a registered mail package sent to her under her first two given names. As I was not satisfied that the landlords served their application to the tenant in accordance with section 89 of the *Act*, I told the parties at the hearing that I was dismissing the landlords' application for dispute resolution with leave to reapply.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit? Are the tenants entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover the filing fee for their application from the landlords?

Background and Evidence

This one-year fixed term tenancy commenced on May 1, 2011. By the time the tenants vacated the rental unit by April 30, 2012, monthly rent was set at $3,200.00, payable in advance on the first of each month. The landlords continue to hold the tenants' $1,600.00 security deposit for this tenancy paid on March 23, 2010.

The tenants' application for a monetary award of $3,200.00 plus the recovery of their filing fee resulted from their claim that the landlords neither applied for dispute resolution to retain their deposit nor returned their security deposit within 15 days of receiving their forwarding address.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "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."

In this case, I find that the triggering date for the 15-day period is May 4, 2012, the date when the tenant sent her forwarding address to the landlord and the landlord confirmed having received it. The landlord testified that he applied for dispute resolution to retain the tenants' security deposit within 15 days of receiving their forwarding address on May 4, 2012. He said that his initial application was cancelled by the Residential Tenancy Branch (RTB) as a result of a typographic error he made to his email address on his original application.

The only evidence that the landlord submitted with respect to his claim that he had applied to retain the tenants' security deposit within the 15-day time period for doing so was his sworn testimony and the cancelled RTB file number. During the hearing, I checked the RTB records to determine the date when the landlord submitted the l initial application to retain the tenants' security deposit. I advised the parties that the landlords submitted their initial application to retain the tenants' security deposit on May 25, 2012. I noted that this application date was outside the 15-day time period for applying for authorization to retain the tenants' security deposit.

The landlord did not dispute the accuracy of the following May 5, 2012 email response entered into written evidence by the landlord to the tenant's request to return the tenants' security deposit to their forwarding address.

> *There will not be a damage deposit returned. The cost to fix the carpets already exceeds the damage deposit. The cost for cleaning and carpet cleaning will be additional and I expect the owner will want to file for arbitration to collect on the additional costs.*

Based on the above email, I find that the landlord clearly received the tenants' forwarding address and decided to retain it and to seek an additional monetary award.

Once it became apparent that the landlords did not submit their application for authorization to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address, the landlord maintained that the tenant had given the landlords authorization to retain a portion of the security deposit. The landlord testified that the parties conducted almost all of their interaction with one another during this tenancy by email. The landlord asked that if the tenant's emailed forwarding address constituted the provision of their forwarding address in writing in accordance with section 38 of the *Act*, emails exchanged between the parties should also be considered as evidence that the tenants had agreed to let the landlords retain all or a portion of their security deposit.

As noted above, section 38(4)(a) of the *Act* would have allowed the landlord to retain portions of the tenants' security deposit if I were to agree that the tenants had given

their written authorization to retain their deposit. Under certain circumstances, I would accept the landlord's claim that the tenant's emails constituted an agreement in writing pursuant to section 38(4)(a) of the *Act* to enable the landlords to retain all or a portion of the tenants' security deposit. For example, in the context of this tenancy an email containing an itemized summary of amounts that the tenant had agreed to let the landlords could deduct from the security deposit might qualify as written authorization to retain a portion of the security deposit. While I have carefully reviewed the emails between the parties, I am not convinced that these emails constitute a specific and quantifiable agreement by the tenant permitting the landlords to retain the security deposit. The tenant did agree that she had not cleaned the carpets before the tenancy ended and that the landlords could retain carpet cleaners and apply that cost against her security deposit. However, no dollar amounts were identified in any of the emails exchanged between the parties with respect to any deductions from the security deposit. I also note that even if the tenant did give written authorization to retain the cost of carpet cleaning, this $392.00 cost would not have enabled the landlords to retain the remaining $1,208.00 of that deposit. Within a few days of receiving the tenants' forwarding address, the landlord was clearly indicating in his emails that the landlords intended to apply for dispute resolution to authorize them to retain much more than the carpet cleaning of the premises. I do not find that the tenant provided the landlords with written authorization to retain the tenants' security deposit.

I find that the landlords have not returned the tenants' security deposit in full within 15 days of receipt of the tenants' forwarding address in writing. There is no record that the landlords applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit within the time limit for doing so. I am not satisfied that the landlords obtained the tenants' written authorization at the end of the tenancy to retain the security deposit.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to the value of their security deposit for the landlords' failure to comply with the provisions of section 38 of the *Act*. No interest is payable over this period.

There is undisputed evidence before me that the tenants did not professionally clean the carpets at the end of this tenancy. The landlords submitted undisputed email evidence and a receipt to support the landlords' assertion that an expense of $392.00 was incurred by the landlords to clean the carpets at the end of this tenancy. Based on this undisputed evidence, I find that the tenants are entitled to receive a return of $1,208.00 from their security deposit ($1.600.00 - $392.00 = $1,208.00). The landlords

remain at liberty to apply for a monetary award for other damage or losses arising out of this tenancy.

As the tenants have been successful in their application, I also find that the tenants are entitled to recover their filing fee from the landlords.

Conclusion

I dismiss the landlords' application with leave to reapply.

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to recover their portion of their initial security deposit, a monetary award equivalent to their security deposit and the recovery of their filing fee:

Item	**Amount**
Return of Allowable Portion of Security Deposit ($1600.00 - $392.00 = $1,208.00)	$1,208.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the *Act*	1,600.00
Recovery of Tenants' Filing Fee	50.00
Total Monetary Order	**$2,858.00**

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with an **Original Order** as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 29, 2013

Residential Tenancy Branch