



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Carrera Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application to recover the security deposit, other issues and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord's agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for double the security deposit?

Background and Evidence

The parties agree that this tenancy started on July 01, 2010. Rent for this unit was \$1750.00 per month and was due on the 1st of each month. Originally this was a fixed term tenancy for a year and has reverted to a month to month tenancy. The tenant paid

a security deposit of \$850.00 in June 2010. The tenant gave the landlord his forwarding address in writing on July 30, 2012 and again on August 27, 2012.

The tenant testifies that at the start of the tenancy it was a different landlord. The landlord did not ask the tenant to take part in a move in inspection of the unit but had already filled in an inspection report and they just asked the tenant to sign it. The tenant testifies that at the end of the tenancy the landlord did not give the tenant two opportunities to attend a move out condition inspection and the building manager LM asked the tenant to sign the report as LM said there were no problems with the unit and the security deposit would be returned. The tenant testifies that he had asked LM to do the inspection but was informed that LM had some guests coming for lunch and was too busy to do the inspection. The tenant testifies that as he was good friends LM he and his partner borrowed LM's car to run some errands and pick up some glass for LM that LM asked them to collect. The tenant testifies that when they returned to the unit LM let the tenant back into the unit to shower before they spent the night in a hotel as they were flying out of province the next day. The tenant testifies that as he and LM were friends he signed the report however the details on the report were filled in after.

The tenant testifies that he gave the landlord a forwarding address in writing on July 30, 2012 and again a new address on August 27, 2012. The tenant testifies that the landlord has only retained \$550.00 of the security deposit by cheque dated September 11, 2012. The landlord has retained \$300.00 without the tenant's permission. The tenant testifies that he seeks to recover double the security deposit from the landlord along with the \$50.00 filing fee.

The Building manager LM testifies that the tenant gave written Notice indicated that the tenant was vacating the unit before 1.00 on August 31, 2012. Instead the tenant came to the LM's door on August 27 to hand the keys over and stated that he was moving that day and they did not therefore have time to do a walkthrough of the unit. LM testifies that the tenant said he had a flight to catch so the tenant agreed to sign the move out condition inspection report before the landlord had filled it in. LM testifies that she did

not have guests coming for lunch that day. LM testifies that the details on this report were filled in after an inspection and as the landlord found areas of the unit unclean the tenant was charged \$300.00 for the cleaning.

The tenant disputes the testimony of LM. The tenant testifies that LM was fully aware when the tenant was moving out as the elevator had to be booked for the day, a moving truck had been pre-booked a month earlier and the tenants had flights booked to Toronto. The tenant testifies that as they were such good friends he had spoken about his plans to LM. The tenant testifies that he had plenty of time to do the inspection had LM offered the opportunity as the tenants flights were not until later the next day and they were staying in a hotel over night. The tenant refers to a witness letter from his partner who was present during the conversation with LM who has stated in this letter that LM was too busy to do the inspection. This letter has been provided in evidence. The tenant testifies that as he still had possession of the rental unit until August 31, 2012 the landlord could have arranged an inspection at any time and the tenant would have appointed an agent to act on his behalf.

The property manager TK testifies that the building manager does not recall loaning her car to the tenants on August 27. TK asks the tenants how they could have got back into the building or the unit if they had returned their keys to the building manager. The tenant responds and testifies that LM's key was on the car keys and LM let them back into the unit to shower and collect their bags. The tenant refers to his documentary evidence showing the moving truck booking and the airline tickets for August 28, 2012.

The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The tenants argue that it is the landlords responsibility to give the tenant at

least two opportunities to attend a move out inspection and failed to do so. The landlord argues that the tenants were in a hurry and did not want to do an inspection. In this matter the burden of proof falls to the person making the claim. When it is one person's word against that of the other then the person making the claim must provide corroborating evidence to meet the burden of proof. Having reviewed the documentary evidence I find the tenants evidence to be more credible concerning the events that occurred on August 27, 2012. I find it difficult to believe given the friendship that existed between the building manger and the tenant that the building manager would not be aware that the tenants were moving on August 27, 2012 especially when a moving truck turned up to remove the tenants belongings. The landlord still had the responsibility to arrange a move out inspection date with the tenant and failed to do so.

I therefore find the landlord has not established that the tenant has extinguished their right to recover the security deposit. Consequently, I refer the parties to Section 38(1) of the *Residential Tenancy Act (Act)* that says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address on July 30, 2012. As a result, the landlord had until August 14, 2012 to return all of the tenant's security deposit. I further find as the landlord failed to complete a move out condition inspection report with the tenant in accordance with s. 36(2)(c) of the *Act* that the landlord has extinguished their right to file a claim against the security deposit and therefore should have returned the security deposit within the allowable 15 days. Consequently in accordance with s. 38(6)(b) of the *Act* I award the tenant double the security deposit of **\$1,700.00**, even through the tenant has not applied for this amount, less the amount of **\$550.00** that was returned on September 11, 2012.

I further find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,200.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: June 14, 2013

Residential Tenancy Branch

