



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

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 or a portion of her security deposit pursuant to section 38 and to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant testified that she served the landlord with a copy of the tenant's dispute resolution hearing package by registered mail on July 31, 2014. The landlord confirmed receipt of the package and Notice for Hearing. Based on the sworn testimony of the parties, and pursuant to section 89(1) of the *Act*, I find that the landlord was duly served the tenant's dispute resolution hearing package. The landlord also confirmed receipt of evidence packages subsequently served by the tenant.

Issues to be Decided

Is the tenant entitled to a monetary award for the return of a portion of her security deposit? If so, is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began in August 1, 2011 as a one year fixed term tenancy and was renewed on that basis until 2013 when the tenancy converted to a month to month tenancy. Prior to the end of the tenancy, the rental amount of \$800.00 was payable on the 8th of each month. The landlord originally held a security deposit in the amount of \$400.00 paid by the tenant on August 1, 2011. After providing the landlord with a written notice to end tenancy on May 25, 2014, the tenant vacated the rental unit on June 30, 2014. The tenant provided a forwarding address to the landlord at the time she gave notice to end the tenancy.

The tenant testified that the landlord mailed a cheque in the amount of \$200.00 to the tenant on or before July 15, 2014. The tenant testified that a brief note accompanied the cheque indicating that \$200.00 had been deducted from her security deposit for the landlord's cost of professional

carpet cleaning. The tenant testified, and provided documentary evidence, that she had cleaned the carpets herself with a professional grade carpet machine before leaving the residence. The landlord acknowledges that the carpets were cleaned with a machine however the landlord submits that the standard expectation is that the tenant is required to pay for the carpets to be professionally cleaned after move-out.

A condition inspection report was completed on move-in and move-out. On the move-out inspection report, there is little clear indication of the nature of the inspection. The writer merely checked boxes under each category related to move-in and some areas were crossed out as "n/a" or not applicable. Under "move-out inspection", the writer indicates that the tenant "will not[e] sign off on rental" and no tenant signature appears on the document. The tenant testified that she advised the landlord's son (the writer of the condition inspection report) that she was not prepared to accept the deduction provided on the document. The document indicated that \$55.00 would be deducted for unpaid rent/late fees, \$5.00 for key replacement and \$200.00 would be deducted for carpet cleaning. The person who conducted the move-out inspection, the landlord's son, was not present for this hearing.

The tenant provided a copy of the residential tenancy agreement for this tenancy. Term 23 within the tenancy agreement states,

The tenant is responsible for periodic cleaning of carpets and window coverings provided by the landlord. While professional cleaning is recommended at all times, if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for their professional cleaning at the end of the tenancy

It is also worth noting that this tenancy agreement provides, at term 8, "The right of a tenant or the landlord to claim against the security deposit... for damage to residential property is extinguished if that party does not comply with sections 24 and 35 of the *Act*."

The tenant testified that she left the carpets in the exact state she had found them in on move-in. She testified that she was not aware nor did she believe that the carpets had been cleaned at the start of her tenancy. She also testified that she advised the landlord's son in advance of using the cleaning machine that she intended to clean the carpets in this manner. She testified that the landlord's son did not indicate to her that the carpets had to be cleaned professionally before the condition inspection date. The tenant testified that the landlord's son has been her only landlord contact throughout her tenancy.

The landlord testified that the carpets in the rental unit were professionally cleaned prior to the tenant moving in. She testified that the company who cleaned the carpet after the tenant left also cleaned the carpets at the beginning of her tenancy. While the landlord provided a receipt reflecting the carpet cleaning at the end of the tenancy, she provided no such evidence to show a carpet cleaning at the beginning of the tenancy.

The landlord testified that the tenant had a cat and it was only common courtesy for her to clean the unit thoroughly before the next tenant moved in. She testified she was concerned about pet

odours and stains however she provided no documentation or testimony to evidence that odours or stains actually existed in this unit after the tenant vacated the unit. The landlord testified that she had not taken a pet deposit for this tenancy but was aware that the tenant had a cat.

Analysis

The *Residential Tenancy Act* defines a "security deposit" as follows:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees]...

The landlord provided some evidence that the retention of a portion of the deposit was to address odours or stains by the tenant's cat. The landlord should take a pet deposit if she is aware that a pet has been brought into the rental unit and if she wishes to be in a position to seek damages at the end of the tenancy with respect to that pet.

More generally, 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 in writing, to either return the security deposit in full 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 for return within the 15 day timeframe is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after June 30, 2014 to take one of the actions outlined above. The landlord returned *an* amount within 15 days; however it was not the full security deposit. The landlord did not apply for dispute resolution to seek an order to retain the deposit or a portion thereof.

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." This is often accomplished by the signing of the condition inspection report. However, there was no signing, dating or agreement on the condition inspection report supplied. Further, the tenant testified that she stated her disagreement to the landlord's son and chose not to sign the condition inspection report because of that disagreement. As there is no evidence that the tenant has given the landlords written authorization at the end of this tenancy to retain any portion of her security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The landlord retained a portion of the deposit to recover the cost of carpet cleaning. There is no clear evidence that the carpets required further cleaning. Furthermore, I do not find, based on the testimony provided, that the tenant was obliged, under the tenancy agreement, to have the carpet cleaned professionally. Regardless of any valid claim the landlord might have, she did not take the required steps under the *Act* to retain a portion of the security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

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 the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *...*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security deposit **in full** within the required 15 days. The tenant gave testimony indicating that she has not waived her right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of her security deposit with interest calculated on the original amount only, less the value of the returned security deposit. No interest is payable for this period of time.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I grant the tenant's application for return of her security deposit and issue a monetary order including double the value of her security deposit less the portion of the deposit returned by the landlord.

I grant the tenant's application to recover the \$50.00 filing fee for this application.

I issue a monetary Order in favour of the tenant as follows:

Item	Amount
Return of Double Security Deposit as per section 38 of the <i>Act</i> ($\$400.00 \times 2 = \800.00)	\$800.00
Less Returned Portion of Security Deposit	-200.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$650.00

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: February 26, 2015

Residential Tenancy Branch

