Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and both landlords.

During the hearing the tenants clarified that while their original claim included the return of the security deposit; the pet damage deposit; and a portion of their last month's rent the landlords did return the $230.00 claim for rent. They further clarified that their claim remained just to deal with the security and pet damage deposits.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit; pet damage deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The parties agreed the tenancy begin on October 1, 2014 for a 1 year fixed term tenancy that converted to a month to month tenancy on October 1, 2015 for a monthly rent of $750.00 due on the 1st of each month with a security deposit of $375.00 and a pet damage deposit of $375.00 paid. The parties agreed the tenants vacated the rental unit by February 18, 2016.

The tenants submit that when they completed the move out condition inspection the landlord had already completed the sections of the Condition Inspection Report that showed the tenants agreed with the condition of the rental unit and agreeing to allow the landlords to deduct monies from the deposits to cover repairs. The tenants noted that an actual amount of deductions were not specified in the Condition Inspection report.

The female tenant, who signed the Report, stated that even though the landlord had checked off that they agreed with the condition as recorded she felt intimidated by the landlord and did not change the recording.

The landlords submitted that the check mark by the agreement of the condition was not put in the Report by the landlords but rather it was the tenants who checked it off. The landlord also stated that he obtained the estimates for the work which he provided to the tenants by email and asked if they agreed and would accept the balance as settlement of the security and pet damage deposits.

The tenants submitted into evidence a copy of that email dated February 26, 2016 showing the landlord would be returning to the tenants $317.86 of which $230.00 was for a return of rent for part of February 2016 and the balance of $87.86 was for the deposits less the amount of the landlords' estimates.

The parties agreed the tenants responded by text message that they were ok with this and they would accept the e-transfer of the amount stated by the landlord. The tenants testified that they only did this because they were not aware of the rights and had had some previous interactions with the landlords that made them not want to push any of the issues.

Analysis

At the end of a tenancy a landlord is required to complete a condition inspection with the tenants and to provide the tenants with a written report of that inspection that is signed by both parties. The Condition Inspection Report itself provides for the tenant to agree or disagree with the condition.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

While the tenants submit that the landlord had already checked off that they agreed with the condition of the rental unit and that they were too intimidated by the landlords to change the check mark to show that they disagreed with the landlord I find they have provided no evidence to corroborate their position.

As such, I find the tenants agreed to the condition and that they owed the landlord for repairs. However, as noted below in order for the landlord to retain a portion of the security deposit he must have their written permission that they may retain an "amount" from the deposits.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Section 38(4)(a) of the *Act* states a landlord may retain an amount from a security deposit or a pet damage deposit if the tenant, at the end of the tenancy, agrees in writing the landlord may retain that amount to pay a liability or obligation of the tenant.

I accept that when the parties completed the Condition Inspection Report the landlords did not indicate an amount that would be deducted from the security deposit for the repairs noted. As such, at that point the landlords did not have authourity to retain any portions of the deposits.

However, I accept that the tenants, from the testimony of both parties, did provide the landlord with their written consent when they sent their approval by text message to the landlords after the landlords' email of February 26, 2016 outlining the amount the landlord intended to retain from the deposits.

As such, I find the landlord is entitled to retain $662.14 from the deposits and have returned the full amount owed to the tenants of $87.86.

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety and without leave to reapply.

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: August 31, 2016

Residential Tenancy Branch