



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security and pet deposit and to recover the filing fee from the landlord for the cost of this application.

The original hearing took place on July 29, 2016. A decision was made on August 26, 2016 by a different Arbitrator. The landlord applied successfully for a review of that decision and the original decision and order were suspended on September 22, 2016. A Review Hearing was granted and this was held on today's date. The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. 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. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover the security and pet deposits?

Background and Evidence

The parties agreed that this month to month tenancy started on December 01, 2013. Rent for this unit was \$750.00 per month due on the 1st day of each month in advance. The tenant paid a security deposit of \$375.00 and a pet deposit of \$25.00 on November 28, 2013. The tenancy ended on November 30, 2015.

The tenant testified that she provided her forwarding address to the landlord by text message on December 03, 2015. The landlord did not return the security or pet deposit within the 15 allowable days. The tenant testified that the landlord did not do a move out condition inspection report at the end of the tenancy and only a walkthrough of the unit was conducted. The tenant testified that she did not give the landlord permission to keep all or part of the security or pet deposit and although the landlord offered to return \$200.00 the tenant did not agree to this.

The tenant testified that she does not waive her right to the doubling provision under the *Residential Tenancy Act (Act)* to have the security and pet deposit doubled and requests to amend her application to reflect this. The tenant therefore seeks to recover \$800.00 plus the \$50.00 filing fee.

The landlord's agent spoke on behalf of the landlord and testified that the landlord and tenant did do a walk through verbal inspection of the unit on December 01, 2015. The only damage to the unit was to the floor. This damage had been previously brought to the tenant's attention in November, 2015 and the tenant is responsible under the *Act* to repair that damage. The tenant made an attempt to repair the flooring but this was not done correctly. The landlord and tenant had a disagreement about the repair and the landlord offered to return \$200.00 to the tenant from the security deposit and to keep the reminder.

The landlord's agent testified that the landlord has not received a forwarding address in writing from the tenant and the landlord only sent evidence to the tenant when they received the tenant's application for Dispute Resolution.

The landlord's agent asked the tenant that at the time of the walk through with the landlord did the landlord confirm everything was in good order other than the floor. The tenant responded verbally yes she did. The landlord's agent asked the tenant if the tenant provided a forwarding address in writing other than by text message. The tenant responded no only by text message.

The tenant confirmed at the hearing that the address provided on her application is her forwarding address.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter the tenant has the burden of proof and must show that the tenant sent the landlord her forwarding address in writing. S. 38(1)(b) of the Act specifies that the tenant must provide a forwarding address in writing. Email and text messages are not considered to be a method used to provide a forwarding address in writing unless the tenant has evidence to show the landlord responded to that email or text message acknowledging that she received the tenant's forwarding address by text message.

The tenant has provided a screen shot dated December 03, 2015 of the text message containing her forwarding address but the following text message from the landlord on December 04, 2015 does not refer or acknowledge receipt of this address. Consequently, I must take regard to s. 38 of the *Act* and deem that the tenant has not provided a forwarding address in writing prior to this hearing and the tenant's application to recover double the security and pet deposit is therefore premature.

However, at the hearing the tenant stated that the address on the application for Dispute Resolution is her present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today October 20, 2016.

With this in mind I refer the parties to s. 35(3) of the *Act* which requires a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection report when the tenant moved out, I find the landlord contravened s. 35(3) of the *Act*. Consequently, s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security or pet deposit for damages is extinguished.

When a landlord's right to claim against the security and pet deposit has been extinguished the landlord must return the security and pet deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing.

The landlord therefore has 15 days from today's date to return the security and pet deposits to the tenant. If the landlord fails to do either of these things the tenant is at liberty to file a new application for Dispute Resolution after the 15 day deadline has passed.

The landlord is also at liberty to file an application concerning damage to the unit but not to keep the security deposit against any damages.

As the tenant's application is premature the tenant must bear the cost of her own filing fee.

Conclusion

The tenant's application is premature and is therefore dismissed with leave to reapply.

In accordance with s. 82(3) of the *Act* the original decision and order are set aside.

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: October 20, 2016

Residential Tenancy Branch

